



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, MNDC, OLC, PSF, RR, FF

Introduction

This hearing was scheduled to deal with the applicant's request to cancel a 2 Month Notice to End Tenancy; for monetary compensation under the Act, regulations or tenancy agreement; for orders requiring the landlord to comply with the Act, regulations or tenancy agreement and provide services or facilities required by law; for authorization to reduce rent; and, for recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to be heard with respect to relevant issues. The respondent confirmed receipt of the Application for Dispute Resolution and evidence provided by the applicant.

As a preliminary matter I raised the issue of jurisdiction upon initial review of the applicant's documentary evidence.

Issues(s) to be Decided

Does the Act apply to this relationship between the parties and do I have jurisdiction to resolve this dispute?

Background and Evidence

I was provided undisputed testimony as follows. The respondent is the owner of the residential property. The property has a main level and a basement. The applicant had possession of a bedroom and bathroom in the basement level and was permitted use of the oven in the kitchen used by the respondent. The applicant did not have to obtain

the respondent's permission to use the oven. The applicant used the oven on two occasions and used the respondent's answering machine and laundry facilities.

Upon enquiry, the respondent characterized the relationship with the applicant as that of a roommate and that they shared living accommodation. The respondent stated that she had posted an advertisement for a roommate after her husband died.

The applicant was of the position the parties did not have shared living accommodation and explained that he went to efforts to give the respondent much privacy by using a microwave and hotplate for most of his cooking.

Included in the applicant's evidence was a document entitled "room-mate agreement", the on-line posting for a "roommate", and a 2 Month Notice to End Tenancy for Landlord's Use of Property dated July 24, 2010.

The 2 Month Notice does not indicate a reason for ending the tenancy on the second page. Upon enquiry, the respondent stated she wanted to regain use of the basement bedroom and did not know how to go about doing so or how to use the form properly.

The applicant submitted that the 2 Month Notice indicates the Act applied to the agreement with the respondent. The applicant submitted that use of one appliance in the kitchen does not constitute shared use of the kitchen. The applicant submitted that using the respondent's oven twice should not result in the Act not applying to this dispute.

Analysis

As explained to the parties during the hearing, section 4 of the Act provides for situations where the Act does not apply. Specifically, section 4(c) provides as follows:

What this Act does not apply to

4 This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

Upon hearing from the parties that the applicant was permitted use of the oven under the agreement between the parties, that the oven was located in the kitchen used by the respondent, and that the respondent was the owner of the living accommodation, I find criteria of section 4(c) have been met.

As the oven was located in the respondent's kitchen I find the applicant was using the owner's kitchen facilities. I find the applicant's assertion that he used the oven in the owner's kitchen only twice does not exclude the applicability of section 4(c). Rather, the applicant was permitted to use the oven according to the agreement with the respondent and did use the oven in accordance with that agreement.

I find the issuance of a 2 Month Notice by the respondent does not in itself form a tenancy agreement to which the Act applies. Rather, the Notice would have been unenforceable under the Act had the respondent tried to enforce it.

In light of the above, I have determined that the Act does not apply to the agreement or relationship between the parties and I do not have jurisdiction to resolve this dispute. The parties are at liberty to resolve their dispute in the proper form.

Conclusion

I have found that the Act does not apply to this dispute and I have declined jurisdiction.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 12, 2010.

Dispute Resolution Officer