



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR, FF

Introduction

This hearing was convened in response to the Applicant's Application for Dispute Resolution, in which the Applicant has made application for a monetary Order for unpaid rent and to recover the filing fee from the Respondent for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing and were provided with the opportunity to give evidence in regards to the issue of jurisdiction.

Issue(s) to be Decided

Before considering the merits of the Application for Dispute Resolution I must determine whether this application has jurisdiction under the Residential Tenancy Act (Act).

Background and Evidence

The Applicant and the Respondent agree that the Respondent moved into the rental unit on October 06, 2004; that the parties entered into a written agreement in which the Respondent agreed to pay monthly rent of \$600.00 to the Applicant; that the Respondent and the Applicant shared kitchen facilities in this rental unit; and that the Applicant moved out of the rental unit on June 20, 2009.

The Applicant stated that he jointly owned the rental unit with his father on October 06, 2004; that his father died in December of 2004; and that he continued to own the rental unit for the duration of this "tenancy". The Respondent stated that he does not know who owned the home while he resided at this rental unit.

The Applicant and the Respondent agree that this matter was the subject of a proceeding in the Small Claims Court of British Columbia on April 11, 2011, at which time Judge Steinberg determined that the Residential Tenancy Branch Director has exclusive jurisdiction over this matter. The parties agree that the issue of ownership of the rental unit was not raised at the proceedings on April 11, 2011.

Analysis

On the basis of the evidence presented at the hearing and in the absence of evidence to the contrary, I find that the Applicant and the Respondent shared the kitchen facilities in this rental unit.

On the basis of the evidence presented at the hearing and in the absence of evidence to the contrary, I find that the Applicant is the owner of this rental unit.

Section 4(c) of the *Act* stipulates that the *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. I therefore conclude that I do not have jurisdiction in this matter, pursuant to section 4(c) of the *Act*.

In determining the issue of jurisdiction I am cognizant that Judge Steinberg has previously determined that I do have jurisdiction in this matter. It is unclear to me, however, whether Judge Steinberg had the opportunity to consider section 4(c) of the *Act* when determining jurisdiction.

Conclusion

As I do not have jurisdiction in this matter, I decline to consider the Application for Dispute Resolution.

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 09, 2011.

Residential Tenancy Branch