



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the Tenant: CNC, OLC
For the Landlord: OPC, OPB, FF

Introduction

This hearing was convened in response to cross applications.

The tenant filed an Application for Dispute Resolution, in which the tenant applied to set aside a Notice to End Tenancy for Cause and for an order requiring the landlord to comply with the *Residential Tenancy Act* (the “Act”).

The landlord filed an Application for Dispute Resolution, in which the landlord has applied for an Order of Possession for Cause and for the tenant’s breach of a material term and to recover the fee from the tenant for filing this Application for Dispute Resolution.

The parties and the landlord’s witnesses appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

At the commencement of the hearing, I asked the Applicant questions regarding the arrangements for facilities in the residential building for purposes of establishing jurisdiction under the Act.

The hearing proceeded on the issues in the event I found jurisdiction to decide this matter.

Issue(s) to be Decided

Do I have jurisdiction under the *Act* to consider these applications for dispute resolution?

Is the tenant entitled to an Order cancelling the 1 Month Notice to End Tenancy for Cause and for an order requiring the landlord to comply with the *Act*?

Has the tenant breached the Act or tenancy agreement, entitling the landlord to an Order for Possession and to recover the filing fee?

Background and Evidence

I heard testimony that this month to month tenancy began on October 12, 2010, monthly rent is \$500.00 and the tenant paid a security deposit of \$250.00 at the start of the tenancy.

The rental agreement entered into evidence states, among other things, that the tenant was renting “a furnished, lockable room in a house” to the tenant who “agrees to the following conditions to maintain a single...room which shares bath, kitchen & laundry with other like **tenants and the landlord.**” The agreement also included a provision that the landlord would make available soaps & cleaning supplies, garbage bags and toilet paper. These provisions were initialled by the tenant. [emphasis added]

The landlord stated that he is living away from the premises temporarily while his suite in the residential building is being renovated, but that he is returning his belonging there now and will be returning to reside there by the end of the month. Further, the landlord stated that he has had a presence in the residential building throughout the tenancy.

Analysis

In order for the Applicants to succeed in this application, the Applicants must show that the *Residential Tenancy Act* applies.

Section 4 (c) of the *Act* states that the Act does not apply to living accommodation in which the tenant shares a bathroom or kitchen facilities with the owner of that accommodation.

I find that on a balance of probabilities that the landlord and the tenant share kitchen and bathroom facilities, regardless of the landlord living temporarily away from the residential building until the end of the month. I find that the language in the rental agreement clearly states that the landlord, who is the owner of the building, will be sharing bathroom and kitchen facilities with this tenant during the times of the tenant's occupancy.

Conclusion

As a result, I decline to find jurisdiction to resolve this dispute. The parties are at liberty to seek the appropriate legal remedy to this dispute.

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 11, 2011.

Residential Tenancy Branch