



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OLC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking the a Monetary Order for money owed or compensation for damage or loss under section 67 of the Act, Regulation or tenancy agreement.

Both parties appeared and gave testimony.

Preliminary Matter

At the outset of the hearing the landlord challenged jurisdiction and took the position that the tenancy was not governed by the Act as the landlord owns the suite and has been occupying the unit along with the tenant in between business trips and sharing a kitchen with the tenant. The landlord acknowledged that a written agreement was signed, but it pertained to the shared unit and was only created at the tenant's request.

The tenant argued that the landlord was gone for long periods, but did admit that the landlord was entitled to stay in the unit as she saw fit and there were times when the two parties cohabited .

Section 4 of the Residential Tenancy Act states that the Act does not apply to the following:

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation, (*my emphasis*)
- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,

- (e) living accommodation occupied as vacation or travel accommodation,
- (f) living accommodation provided for emergency shelter or transitional housing,
- (g) living accommodation
 - (i) in a community care facility under the *Community Care and Assisted Living Act*,
 - (ii) in a continuing care facility under the *Continuing Care Act*,
 - (iii) in a public or private hospital under the *Hospital Act*,
 - (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
 - (v) in a housing based health facility that provides hospitality support services and personal health care, or
 - (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,
- (h) living accommodation in a correctional institution,
- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,
- (j) tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies, or
- (k) prescribed tenancy agreements, rental units or residential property.

Given the above, I find that this tenancy relationship is not one that is governed by the Act and I therefore lack any authority to hear or consider this application.

I hereby decline to hear this application on the basis that I lack jurisdiction to do so.

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 17, 2011.

Residential Tenancy Branch