



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RP, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order to the Landlord to comply with the Act, regulation, or tenancy agreement, for the Landlord to make repairs to the unit, site or property, for an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and for reimbursement of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The Tenant has applied for dispute resolution of a number of issues, however I have only referred to the relevant evidence and information of the parties in my decision, as the primary issue is whether or not the Residential Tenancy Act, (the "Act"), applies to the living arrangement between these parties.

I have referred to the parties as Landlord and Tenant throughout the decision and the living accommodation as a rental unit for simplicity, and not for any other reason.

Issue(s) to be Decided

Does the Act apply to these parties living arrangement?

Background and Evidence

The Landlord confirmed that she had received the Dispute Resolution Application and hearing notice from the Tenant in advance of the hearing. The Tenant confirmed that she received the Landlord's submission of evidence in response to the Application in advance of the hearing. However, the Landlord states that she did not receive the Tenant's submissions of evidence from the Tenant. As a result I advised the Tenant I would not be considering the hand written submissions of evidence she had made to our office dated November 15, November 16, and November 21, 2011. The Tenant understood and stated she would make verbal testimony in support of her claim.

The parties agree that the Tenant moved into the Landlord's home in September 2009. The parties agree that the Landlord owns the home and it is where the Landlord and her

family reside. The parties do not have a written tenancy agreement. The parties agree that in September 2009 the Tenant moved into the Landlord's home. The Tenant pays the Landlord \$650.00 per month to live there.

The Landlord's position is that SC is not a Tenant, there is no tenancy agreement between them, and the Act does not apply to their living arrangement. The Landlord states that other than the bedroom on the main floor that she rents to the Tenant, the Tenant does not have exclusive use of any other area of the house and all other areas are shared with the Landlord and the Landlord's family.

SC states that she is a Tenant, that they have a verbal tenancy agreement and that the Act does apply to their living arrangement. SC states that she has a bedroom with a keyed lock on it. The Tenant states that there is only one bathroom on the main floor of the house which is for her use, although it is not locked. The Tenant states that there is a kitchen downstairs that she uses and it is also not locked. The Tenant states that it was her understanding from the outset of the living arrangement that the main floor bathroom and the downstairs kitchen were for her exclusive use.

The Landlord states that although she has a bathroom upstairs near her bedroom area, she and her family use the bathroom on the main floor as do their friends and guests. The Landlord states that the main floor has only the one bathroom and it is close to the kitchen on the main floor and the living room. The Landlord states that the bathroom has never been designated for the Tenant's exclusive use and that it has always been shared. The Landlord states that the kitchen downstairs is used by the Landlord sporadically, as it is where she make perogies at this time of year, and it is also used by her in the summer when she is hosting a barbeques and other events because she has a lot of food to prepare and her upstairs kitchen is not sufficient enough.

The Tenant states that she is not sure if the Landlord or guests have used the bathroom on the main floor as she is usually in her room and cannot see what the Landlord or her guests are doing. The Tenant confirms the Landlord has used the kitchen downstairs, but claims this is just an excuse to try and get her to move out without providing proper notice. The Tenant feels that the Landlord should go upstairs and use her own bathroom and only use the kitchen on the main floor and not the one downstairs. The Tenant confirmed that these facilities are not self contained and there are no physical barriers or locks currently on the main floor bathroom or downstairs kitchen that restrict access.

For the benefit of both parties, I explained section 4(c) of the Act which states:

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.

The Landlord's position is that Act does not apply to the living arrangement which they have with the Tenant.

The Tenant stated that she feels that the Act does apply.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that evidence of the parties confirms that the Landlord shares the kitchen and bathroom facilities with the Tenant.

I find that living arrangement between the parties is exempt from the provisions of the Act pursuant to section 4 of the Act.

As a result I dismiss the Tenant's Application.

Conclusion

I dismiss the Tenant's Application.

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: November 30, 2011.

Residential Tenancy Branch