



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC, RPP

Introduction

This hearing was scheduled in response to the Application for Dispute Resolution, in which the Applicant has made application for an Order requiring the Respondent to comply with the *Residential Tenancy Act (Act)* and for an Order for the return of personal property belonging to the Applicant.

Preliminary Issue

Before examining the merits of the Applicant's Application for Dispute Resolution I must determine whether this application has jurisdiction under the *Act*. The legislation does not confer authority to consider disputes between all types of relationships between parties.

The Applicant and the Respondent agree that on October 01, 2011 the Applicant moved into the main house on the residential property, at which time the parties shared kitchen and bathroom facilities; and that the Respondent owns the residential property.

The Applicant and the Respondent agree that the Applicant moved into unfinished suite on the residential property, which is not attached to the main house. The Applicant contends that she moved into the unfinished suite at the beginning of November of 2011 and the Respondent contends that she moved into the suite at the beginning of December of 2011.

The Respondent stated that there are no kitchen or bathroom facilities in the unfinished suite; that while the Applicant was occupying the unfinished suite she was using the bathroom in the main house and that while the Applicant was occupying the unfinished suite she was using a hotplate in the suite and occasionally cooked in the main house.

The Applicant stated that there are no kitchen or bathroom facilities in the unfinished suite, although there is a refrigerator and a hotplate; that while the Applicant was occupying the unfinished suite she was using the bathroom in the main house; and that while the Applicant was occupying the unfinished suite she was using a hotplate in the suite and occasionally cooked in the main house.

After being advised that I did not believe I had jurisdiction in this matter because the parties were sharing bathroom facilities, the Applicant stated that she had purchased a portable toilet for the unfinished suite; that she never used the bathroom facilities in the main house after she moved into the unfinished suite; that she did not shower while she was living in the unfinished suite; that she used a hotplate to cook in the unfinished suite; and she never used the kitchen in the main house after she moved into the unfinished suite.

The Respondent agreed that the Applicant told him she was buying a portable toilet but he did not see one and she continued to use the bathroom facilities in the main house.

Section 4(c) of the *Residential Tenancy Act (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 find that the Applicant and the Respondent shared bathroom and kitchen facilities while the Applicant was living in the main house and in the unfinished, detached suite. I therefore find that I have no jurisdiction in this dispute.

In reaching this conclusion I placed no weight on the amended testimony of the Applicant. I favour her original testimony, in which she stated that she shared bathroom and kitchen facilities with the Respondent while she was living in the main house and that she shared bathroom and, on occasion, kitchen facilities with the Respondent while she was living in the unfinished suite on the residential property over her testimony that that she never used the bathroom or kitchen facilities in the main house after she moved into the unfinished suite. I find that her original testimony was consistent with the testimony of the Respondent, which lends credibility to the original testimony.

Of greatest importance, I find that the Applicant did not amend her testimony until she was advised that I did not have jurisdiction in living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. I find that the amended testimony was clearly self-serving and was altered in an attempt to have this matter resolved by these proceedings.

Conclusion

As the *Act* does not apply to these parties, I find that I do not have jurisdiction in this matter and I dismiss 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: January 30, 2012.

Residential Tenancy Branch