



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This application was brought by the tenant on November 30, 2011 seeking a Monetary Order for \$25,000 for damage or loss under the legislation or rental agreement

By letter of January 12, 2012 and orally at the hearing, legal counsel for the landlord challenged the jurisdiction of the Residential Tenancy Branch to hear this matter on two grounds:

1. The rental agreement for this tenancy of approximately three weeks included shared use of kitchen and/or bathroom facilities, a type of accommodation expressly removed from the jurisdiction of the *Residential Tenancy Act* by section 4(c) of the *Act*.
2. The tenant filed a similar claim with the Provincial Court of British Columbia on November 7, 2011 and the landlord filed a counter claim on November 17, 2011, copies of which were submitted into evidence.

The rental building in question is made up of a 2,000 square foot upper suite and a 500 square foot basement suite in which the landlord resides.

During the hearing, with assistance of his legal counsel, the landlord gave evidence that it was his intention to rent one bedroom in the basement suite as shared accommodation for the brief tenancy. The \$500 per month rent for the room was prorated to \$375 for the tenancy.

The tenant stated that the agreement allowed her full use of the entire rental building and there was no sharing of kitchen and bath.

Written evidence submitted by the landlord's property manager who attended the hearing stated that the landlord had entered into a fixed term agreement with another

party on November 6, 2011 for the larger upstairs suite. He had accepted a security deposit on of \$650, with the tenancy to begin December 1, 2011 at \$1,300 per month. The property manager had placed market value of the rental unit at \$1,700 per month but the landlord had lowered the rent as he had found the applicant would be an exceptionally good tenant.

As a matter of note, the landlord had consented to rescind that agreement when the prospective upstairs tenant had been alarmed by an encounter with the present applicant.

As to the present applicant, there is no written rental agreement with respect to the three week tenancy.

Legal counsel for the landlord pointed to copies of advertisements submitted by the tenant, one of which was circled by the tenant and restates the landlord's telephone number and bears the notation, "shared accommodation."

The landlord stated that he had never contemplated anything other than renting one room with shared facilities to the applicant.

Despite the submissions by the applicant to the contrary, I find that the tenancy was for a room and shared bath and/or kitchen. In addition to the evidence to that effect, the balance of probabilities strongly favours the position that a rental rate of \$375 could not reasonably be expected to imply full use of the two suites

Therefore, this application is dismissed without leave to reapply as I find it is excluded from the jurisdiction of the *Residential Tenancy Act* section 4(c) of the *Act*.

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: February 10, 2012.

Residential Tenancy Branch