



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of double the Tenants security deposit and the filing fee for this proceeding.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on January 23, 2012. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenants in attendance.

At the start of the hearing the Landlord said this is a shared accommodation arrangement and therefore it is not covered by the Residential Tenancy Act. The Landlord said her office is in the basement and she used the living area, bathroom and kitchen in the basement when she need to. The rooms she rented to the Tenants are also in the basement. The Landlord said she had full access to the public areas, the bathroom and the kitchen in the basement. Further the Landlord said the condition inspection report for the female tenant says the tenancy is for 2 bedrooms and shared public areas. As well the Landlord included an advertisement for the unit which states it is for single occupancy with shared public areas and bathroom.

The Tenants said they had sole position of the basement suite as indicated on page two of the Tenancy Agreement. The Tenants said they had provided a copy of the Tenancy Agreement in a previous Dispute Resolution Hearing, but did not provide it for this hearing. Consequently the Tenants could not prove this was a tenancy and not a shared accommodation arrangement as the Landlord said it was.

Under Section 4 (c) of the Act it says the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. I accept the Landlord’s testimony and evidence that she shared the public areas, the kitchen and the bathroom of the basement with the Tenants; therefore this was a living accommodation arrangement not a tenancy as defined in the Residential Tenancy Act.



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Office of Housing and Construction Standards

Consequently this living accommodation arrangement is not under the jurisdiction of the Residential Tenancy Act and I have no authority to rule on the Tenants request and application. The Tenants' application is dismissed for lack of jurisdiction by the Residential Tenancy Act.

As the Tenants were unsuccessful in this matter I order the Tenants to bear the cost of the filing fee of \$50.00 for this proceeding which they have already paid.

Conclusion

I dismiss the Tenants application with leave to reapply due to lack of jurisdiction under the Residential Tenancy 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*.

Dispute Resolution Officer