



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This conference call hearing was convened in response to the tenant's application for an Order to the landlord to comply with the Act, regulation, or tenancy agreement, and to recover the filing fee for this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Background and Evidence

At the outset of the hearing the landlord raised an issue on the basis of jurisdiction. The landlord described the property as a four bedroom house where the tenant occupies the upper level of the house; and the landlord occupies the basement. The landlord stated that the tenant has her own bathroom and kitchen, but that there is also a bathroom in the common area shared by both parties. The landlord takes the position that regardless of the other bathrooms in the house, the sharing of this common bathroom disqualifies the living arrangement as a tenancy subject to the provisions of the Act. The landlord provided a copy of the tenancy agreement showing that she deleted all references to tenants or tenancy, and replaced them with roommates and rooms.

Analysis

Section 4 of the *Residential Tenancy Act* states in part that the Act does not apply to: “*living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation*”.

This section, and the spirit in which it was written, was to distinguish formal tenancies from a more casual, family type of living arrangement. The mere fact that a bathroom is shared by all occupants does not necessarily constitute a family arrangement and does not preclude the existence of an actual tenancy. That is to say that an outside bathroom by an outdoor swimming pool shared by all occupants could not be considered under a tenancy agreement and that the Act would have no jurisdiction.

In this case the landlord and the tenant have their own kitchen and bathroom in their respective living quarters; and they happen to have a shared common area with a bathroom. The *Residential Tenancy Act* defines in part “tenancy agreement” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities. Bathrooms in common areas do not necessarily constitute an exemption of a tenancy under the Act.

I find therefore that this living arrangement is a tenancy and that the Act does have jurisdiction. As such the landlord may not avoid or contract out of the Act or the regulations.

Accordingly the Act does apply and I find that I have jurisdiction to consider the tenant’s application.

Conclusion

If the landlord wants to end the tenancy to occupy the portion of the house rented by the tenant, the landlord must serve the tenant with a 2 Month Notice to End Tenancy.

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Since the tenant was successful, I authorize the tenant to recover the filing fee by a one-time deduction of \$50.00 from the next rental payment.

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: March 22, 2012.

Residential Tenancy Branch