



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, O

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order compelling the landlord to comply with *Residential Tenancy Act* (the “Act”). The tenant provided evidence showing that she served the landlord with the application for dispute resolution and notice of hearing via registered mail sent on July 17 and that the letter was returned to her as unclaimed. I was satisfied that the landlord had been served with notice of the hearing as per the requirements of the Act and the hearing proceeded in his absence.

Issue to be Decided

Does this issue fall within the jurisdiction of the Act?

Background and Evidence

The tenant testified that on July 3, a government ministry paid \$400.00 in rent to the landlord on her behalf for a tenancy which was scheduled to begin in July. The tenant discovered that because the residential property was on Indian land, she risked being cut off her disability assistance if she chose to live in the rental unit. The tenant advised the landlord that she could not begin the tenancy and although the landlord said he would refund her rent payment, he did not.

The tenant described the rental unit as a single room in a home in which she was to share a kitchen with other tenants and with the landlord, who owned the property.

Analysis

Section 4(c) of the Act provides 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 as the tenant was to share the kitchen with the landlord/owner, the Act does not apply to this tenancy and for that reason I decline to take jurisdiction.

Conclusion

Jurisdiction is refused. The tenant is free to pursue her claim in Small Claims Court.

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: September 24, 2012

Residential Tenancy Branch