



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OPT

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Applicant on December 12, 2012, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and to obtain an Order of Possession of the rental unit or site.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

Issue(s) to be Decided

Does this matter fall within the jurisdiction of the *Residential Tenancy Act*?

Background and Evidence

The following facts were not in dispute:

- The respondent is the Executrix of the estate of the applicant's late mother; and
- The residence in question was owned by the applicant's deceased mother; and
- The residence is a three bedroom plus a den townhouse with one bathroom and one kitchen; and
- When the applicant stayed at the apartment with her mother in any capacity, (guest, roommate or tenant), she would share the kitchen and bathroom with her mother, the owner of the property.

The applicant submitted documentary evidence which included, among other things, copies of: an Income Assistance Shelter Information Form; and a Ministry of Social Development release of information form.

The respondent submitted documentary evidence which included, among other things, copies of: the respondent's written statement; three witness statements; photographs; an e-mail; and a receipt signed by the applicant.

Analysis

Section 4(c) of the *Act* stipulates that the *Residential Tenancy Act* does not apply to living accommodations, in which the tenant or occupant shares bathroom or kitchen facilities with the owner of that accommodation.

In this case the evidence supports that if the applicant occupied the residence in question she would have shared the kitchen and bathroom facilities with her mother, who owned the property. Therefore, the *Residential Tenancy Act* does not apply.

Conclusion

I HEREBY DECLINE to hear these matters, for want of jurisdiction.

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: December 28, 2012.

Residential Tenancy Branch