



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC LRE O

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Applicant on November 21, 2012, to obtain Orders for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; Order the Landlord to comply with the Act, regulation, or tenancy agreement; suspend or set conditions on the Landlords right to enter the rental unit; and other reasons to determine if this is a residential tenancy.

The parties appeared at the teleconference hearing and gave affirmed testimony.

Issue(s) to be Decided

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

Background and Evidence

The Applicant advised that she had placed an advertisement on the internet seeking accommodation which the Respondent to this dispute answered. She submitted that she agreed to rent a bedroom in the basement with access to the kitchen, bathroom, and seating area. The bedroom, kitchen, bathroom, and seating area were located in the basement which had a private back entrance she was instructed to use. There were three other doors which she did not open so she could not say what was in the other rooms. She was told the Respondent would be accessing the deep freezer and the exercise equipment (treadmill, bike, inversion table) however she did not see anyone access the basement or this equipment during the time she was at the property.

The Applicant stated that she was required to pay \$300.00 for a security deposit and \$600.00 for rent. She argued that she did not see anyone else access the basement are during her time there and she could not recall if she is she was told that others would be using the equipment or other areas of the basement. She acknowledged that there were items in one cupboard of the kitchen and a few towels and decorative boxes

in the bathroom. The basement area was furnished except for the bedroom which was empty.

The Respondent submitted that the basement area is 2275 sq feet and that she informed the Applicant at the beginning that this was “shared accommodation” where she would be renting a bedroom and would have access to other areas that would be accessed by the Respondent, her boyfriend, and her daughter. The rent included utilities and access to these unit but not private possession. She advised that the only access to the utility room where the well controls and electrical panels were located was through the Applicant’s bedroom so she made it very clear that she would need to access the utility room through the bedroom when required.

The Respondent advised that in addition to the pool table and exercise equipment there was also a sauna, hot tub, and closet full of towels which she said she explained would be used daily by herself, boyfriend, and daughter. She noted that she owned other properties and had proper tenancy agreements for those but she also knew that this was shared accommodation and did not fall under the *Act* as she is the owner of this proper and had shared access to the bathroom and kitchen with the Applicant.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Applicant has the burden to prove the existence of a tenancy that falls within the jurisdiction of the *Residential Tenancy Act*. The only evidence pertaining to the agreement for occupancy of the property was disputed verbal testimony which I find insufficient to meet the burden of proof. Therefore, I find the Applicant has not met the burden to prove that this claim falls within the jurisdiction of the *Residential Tenancy Act*.

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: January 02, 2012.

Residential Tenancy Branch