



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD; MNSD; FF

Introduction

The Applicant seeks compensation under the Act, regulation or tenancy agreement; return of a security deposit; and to recover the cost of the filing fee from the Respondent JN.

The parties gave affirmed testimony at the Hearing.

Preliminary Matter

At the outset of the Hearing, the Respondent SV ("SV") submitted that the Act does not apply to this situation because:

- the Respondent JN ("JN") owns the house and shares the kitchen, living room and dining room with the Applicant ("WT");
- the parties all had the same keys;
- there is no door separating WT's living area from JN's living area;
- JN has lived in the house since she purchased it in 1999; and
- WT and his family moved into the house in July 2001, as roommates.

SV described the house as a larger 3 storey house with 5 bedrooms, 5 bathrooms, one living room, one dining room, one kitchen, one laundry room, one TV room, and a 3 car garage.

SV stated that he wrote to WT on December 31, 2012 and asked him to move because JN wanted her house back. On February 18, 2013, he wrote again, explaining that the arrangement did not fall within the Residential Tenancy Act. SV testified that on February 24, 2013, WT gave him notice that he would be moving out and asked for return of the security deposit and furniture deposit. He stated that he tried to return the deposit and accrued interest, with adjustments for unpaid utilities, but WT filed his application with the Residential Tenancy Branch, so all discussions stopped.

WT's agent gave the following submissions:

- WT's family occupied the main and second floor exclusively for the whole time they were living in the house.
- JN did not have the right to use the kitchen, dining room or living room.

- JN used a microwave in her suite to cook her food.
- JN never used the kitchen when WT and his family were home.
- JN didn't usually live there and has another house somewhere.
- WT asked for a door to be installed to separate the living areas, but JN refused because it was too expensive.
- JN is not being truthful.

SV and JN gave the following reply:

- JN and WT's family used to be friends. JN used the kitchen regularly and used to cook for WT's children and for the rest of the family, too. There is no fridge in the Landlord's room. It is not a suite, just a room on the ground floor with a ½ bath. There is another full bathroom on the ground floor as well.
- JN declined to put another door in the house because she shared the house with WT's family and needed access to the kitchen and living room.
- JN lives at the house that she shares with WT's family. She does not own another home. She does own a property in another building, but it is a commercial property which she leases to a restaurant. It is not a property that is suitable for use as a residence, and she would have no right to live there because she rents it out.

Analysis

Section 4(c) of the Act provides that the Residential Tenancy 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 parties' testimony that JN is the owner of the house in which WT lived. Based on the oral testimony and documentary evidence of the parties, I find, on the balance of probabilities, that JN shared the kitchen with WT and his family. I find it very unlikely that the owner of a house would not use her own kitchen to cook her meals, especially since it is the only kitchen in the house and there is no refrigerator in JN's room. In addition, WT's own documentary evidence makes reference to JN using the kitchen and living areas at the house.

Therefore, I decline jurisdiction under the provisions of Section 4(c) of the Act..

Conclusion

I decline jurisdiction in this matter as I find that the Respondent is the owner of the house, and shared the kitchen facilities with the Applicant. Therefore, pursuant to the provisions of Section 4(c) of the Act, the Residential Tenancy Act does not apply.

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: June 21, 2013

Residential Tenancy Branch