



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application by the landlord for an Order of Possession for unpaid rent or utilities and for a Monetary Order; for unpaid rent or utilities; for money owed or compensation for damage or loss under the Residential Tenancy Act (referred to as the Act); to keep all or part of the pet damage or security deposit; and to recover the filing fee from the tenant for the cost of this application.

Both parties attended the hearing and no issues regarding the service of documents for this hearing were raised by either party under the Act. .

At the start of the hearing the tenant testified that this was not a rental situation and that the dispute involved a common law relationship which was currently being pursued through the small claims court.

The landlord testified that he was the owner of the property and the tenant had lived with him after breaking up with her husband on and off before occupying the premises permanently on January, 2013. The landlord confirmed that he allowed the tenant to stay at the address with him as a friend before January, 2013, but then after this time period had taken her on as a tenant.

The landlord and tenant shared kitchen and bathroom facilities and the landlord testified that no written tenancy agreement had been completed and that no security deposit or rent was payable by the tenant.

Analysis & Conclusion

Section (4) (c) of the Act states that the Act does not apply to living accommodation where the tenant shares bathroom and kitchen facilities with the owner of that accommodation.

Furthermore, Policy Guideline 9 to the Act on Tenancy Agreements and Licences to Occupy details the factors that an Arbitrator may consider to determine whether a tenancy exists.

Based on the undisputed testimony of both parties above, I have determined that a tenancy was not established in this matter. This is based on the following factors:

- Payment of a security deposit was not required or made;
- There was no agreed amount of **fixed rent which was payable by the tenant to the owner;**
- The parties had a common law relationship and occupancy was given out of generosity rather than business considerations.

As a result, I find that I am unable to make a determination in this matter as the Residential Tenancy Branch does not have jurisdiction. As a result, I dismiss the landlord's application without leave to re-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: November 18, 2013

Residential Tenancy Branch

