



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of the security deposit - Section 38;
2. An Order to recover the filing fee for this application - Section 72.

The Landlord was given full opportunity to be heard, to present evidence and to make submissions under oath. The Tenant’s legal counsel provided argument and the Tenant submitted an affidavit.

Issue(s) to be Decided

Is this a tenancy under the Act?

Background and Evidence

The tenancy began on or about January 1, 2013 and ended on June 30, 2011. On or about December 25, 2013 the Landlord collected \$250.00 as a security deposit. The Landlord owns the unit.

The Tenant submits that the Landlord has failed to return the security deposit and claims return of double the security deposit. The Tenant submits that the Landlord entered into an agreement with the Tenant and that the Tenant’s legal counsel argues that the Rules provided as evidence by the Landlord was considered by the Tenant as the tenancy agreement. It is noted that these Rules indicate that the “house is to be

shared with the other tenants and the landlord". The Tenant submits that the Landlord did not reside at the unit as both of the two available bedrooms were rented out to the Tenant and another tenant. The Tenant argues that the balcony is part of the common area and not a bedroom. The Tenant submits that the Landlord repeatedly came to the unit without notice.

The Landlord states that the tenancy is not covered under the Act as the Landlord owns the unit and shared the bathroom and kitchen with the Tenant during the tenancy. The Landlord states that the Tenant was brought into the unit as a roommate. The Landlord states that she has not slept at the unit continuously as her employment as a care giver required overnight stays. The Landlord also states that she was also absent for trips away during the tenancy. The Landlord states that all her personal belongings were kept at the unit, the Landlord slept in an enclosed balcony room when she was at the unit and that she also took showers and cooked meals at the unit. The Landlord states that in May 2013 she stayed at another residence as she and the Tenant were not getting along and the Landlord wished to avoid the Tenant.

Analysis

Section 4 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. Given the Rules that note that the unit was being shared with other tenants and the Landlord, considering that the Tenant considers the Rules as the tenancy agreement, and considering the Landlord's evidence of all personal belongings remaining at the unit, I find on a balance of probabilities that the unit was accommodation in which the Tenant shared the bathroom and kitchen facilities with the Tenant. As a result, I find that the Act does not apply to the living accommodation and I dismiss the Tenant's application.

Conclusion

The Tenant's application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 17, 2013

Residential Tenancy Branch

