



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC LAT, O

Introduction

This matter dealt with an application by the Tenant for the Landlord to Comply with the Act, to authorize the tenant to change the locks to the rental unit and for other considerations.

The Applicant said she served the Respondent with the Application and Notice of Hearing (the “hearing package”) by personal delivery on December 13, 2013. Based on the evidence of the Applicant, I find that the Respondent was served with the Applicant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

At the start of the conference call the Respondent’s agent said this situation is not a tenancy, but shared accommodation between the Applicant and the Owner of the property. The Agent said the Owner lives in the lower unit and there is not a full kitchen in the lower unit so the Owner has access to the kitchen in the upper unit. The Agent continued to say there is no locked door between the units and the Owner stores her belongings in the bedrooms in the upper suite that are not used by the Applicant. The agent also said this property does not have a legal suite status by the municipality. As a result the Agent said this is not a tenancy, but shared accommodation between the Applicant and the Owner and therefore the Residential Tenancy Act does not have jurisdiction over this situation.

The Applicant said there is no tenancy agreement, but she believes she is a tenant and the Residential Tenancy Act has jurisdiction in this situation. The applicant said the Owner has not used the kitchen since she move in, although the Applicant said the Owner could use the kitchen whenever she wanted to because she is friends with the Owner. The Applicant continued to say that the Owner’s granddaughter moved into her unit on December 13, 2013 and this situation is very difficult. The applicant said she did not agree to this. As well the Applicant said the Owner or the Owner’s Agent have not given her a Notice to End Tenancy and if they want to end the tenancy they should give her proper notice.

The Residential Tenancy Act says:

Section 4 This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

Both parties agreed there is no locked door between the upper and lower accommodation in this property and there is only one full kitchen in the property. As well the Applicant said the Owner has full access to use the kitchen in the upper unit therefore; I find this situation has a shared kitchen which according to the Act excludes this situation from the Act's jurisdiction. I find this situation is not a tenancy, but shared accommodation between an occupant and an Owner of the property. Consequently there is no tenancy between the Applicant and the Owner of the property; therefore I do not have jurisdiction to make a finding in this matter. The applicant may want to seek legal advice to determine how to proceed with her claims.

In the absence of evidence to show there is a tenancy between the Applicant and Respondent the Residential Tenancy Branch does not have jurisdiction in this situation. I dismiss the application as I find no authority to decide this matter under the *Residential Tenancy Act*.

Conclusion

The application is dismissed for lack 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 27, 2014

Residential Tenancy Branch

