



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and a monetary order for a return of her security deposit.

Neither the tenant nor the landlord attended the telephone conference call hearing; however the tenant's agent did attend.

The tenant's agent testified that he served the landlord with the Application for Dispute Resolution and Notice of Hearing by registered mail on October 17, 2013. The tenant's agent supplied testimony of the tracking number of the registered mail.

Based upon the submissions of the tenant's agent, I find the landlord was served notice of this hearing in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the landlord's absence.

The tenant's agent was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation?

Does this dispute fall under jurisdiction of the Residential Tenancy Act?

Background and Evidence

The tenant's agent testified that the tenant paid the landlord a security deposit of \$250 and the first month's rent of \$500 in September 2013, for a room located in the landlord's home, beginning October 2013.

The tenant's documentary evidence showed that the agreement included full kitchen access, her own bathroom, and utilities.

Due to the information contained in the tenant's documentary evidence, the tenant's agent was questioned about the situation with this tenancy in order to determine if the Act applied to this dispute. In response to my question, the tenant's agent acknowledged that the landlord was the owner of the residential property in question, but denied that the tenant shared kitchen facilities with the owner/landlord.

In further explanation, the tenant's agent stated that the tenant never used the kitchen as she was busy and attended culinary school, taking her meals at the school.

The tenant's agent, in support of the tenant's application, submitted that the tenant was entitled to a return of her security deposit and a refund of the monthly rent due to the actions of the landlord, which forced her to move from the premises early.

Analysis

Section 4 (c) of the *Act* states that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. In this case, the tenant's agent denied that the tenant and landlord shared kitchen facilities.

After considering the documentary evidence submitted by the tenant, which was a handwritten timeline of events and circumstances of her dispute, and in light of the tenant's absence from the hearing, I find that the tenant did share the kitchen facilities with the landlord, the owner of the living accommodation. In reaching this conclusion, I considered that the tenant wrote that, on October 2, 2013, she was instructed by the landlord to not use the kitchen after 6:00 p.m., as the noise would interfere with her television viewing and beer drinking.

I therefore concluded that the tenant did use the kitchen shared with the landlord/owner.

In light of the above, I find that the living accommodation meets the above criteria for exclusion under the Act, and I therefore decline to find jurisdiction to resolve this dispute.

The tenant/applicant is at liberty to seek the appropriate legal remedy to this dispute.

Conclusion

I do not find the *Residential Tenancy Act* applies to this dispute and I have declined 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* and is being mailed to both the applicant and the respondent.

Dated: February 04, 2014

Residential Tenancy Branch

