



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, OLC, PSF, RPP, LRE, RR

Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution made by the Applicant for the following issues:

- To dispute an additional rent increase;
- For a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement;
- For the Respondent to comply with the Act, regulation or tenancy agreement;
- For the Respondent to provide services or facilities required by law;
- To allow the Applicant to reduce rent for repairs, services or facilities agreed upon but not provided;
- To return the Applicant’s personal property; and
- To suspend or set conditions on the Respondent’s right to enter the rental suite

The Applicant appeared with an advocate for the hearing and the Respondent named on the application also appeared with the Co-Respondent who is the owner of the rental unit named on this application. No issues in relation to the service of the hearing documents under the Act were raised by the parties.

Both parties supplied written evidence in advance of the hearing. The Respondent confirmed receipt of the Applicant’s evidence, but the Applicant denied receipt of the Respondent’s evidence. The Respondent was unable to determine the exact date the evidence was served to the Applicant and testified that it was attached to his door, which the Applicant denied receiving. Therefore, I did not consider the Respondent’s evidence as it did not meet the evidence requirements in the Rules of Procedure.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity

to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Matter

At the start of the hearing, I heard evidence from both the female Respondent and the Co-Respondent who was not named on the application. The male Respondent testified that he is the owner of the property which is a large single family dwelling which consists of multiple levels that contain rooms which are leased out to renters. The Respondents live with the renters and share all the kitchen and bathroom facilities throughout the house, although it is understood that the renters are to use the kitchen and bathroom facilities on the floor they reside on.

The female Respondent testified that the Applicant was offered the rental of a room in the basement suite and that the kitchen and bathroom facilities also located in the basement suite were shared common facilities with another renter who was renting the second bedroom in the basement suite. The Co-Respondent testified that he would regularly use the bathroom facilities in the basement area as the bathroom on the main floor would be used by the other renters. He also testified that he would regularly use the fridge and freezer to store his food items and do cooking in the basement kitchen when there was not enough room in the upstairs kitchen.

The female Respondent testified that there was no internal entrance from the basement suite to the main floor level and the Applicant and the other renter in the basement suite were supplied with keys for only the doors leading outside of the property, allowing them their own access in and out of the house. Both Respondents testified that all the renters in the house, including the Respondent, are free to move between the levels of the house and referred to the house as a 'rooming' house.

The Applicant disputed the Respondents' testimony and stated that the basement was a separate suite and that the Respondents were not allowed in the basement suite. The Applicant testified that he would see the Respondent regularly in the common areas of the basement suite and claimed that the Respondents stole items from his room for which the Respondents had not provided him keys for. The Applicant's advocate submitted that he had checked with the city and it appeared that the Respondents did not have a licence to have a rental suite in the property; however, he was not able to verify this. The Applicant submitted that the Respondents did come in and out of the basement suite at their leisure but the Applicant did not want to challenge the Respondents over this during the tenancy until he vacated his room, which he did at the end of February, 2014.

Analysis & Conclusion

Section (4) (c) of the Act states the Act does not apply to living accommodation in which the Applicant shares bathroom or kitchen facilities with the owner of that accommodation.

In this case, I find that the Respondents and the Applicant provided conflicting evidence around the type of tenancy and whether the Act applies. No tenancy agreement was completed by the parties and the evidence, on the balance of probabilities, indicates that the Respondent, one of whom is the owner of the property and the other who collects rent from the renters in the house, are free to move in and out of the basement suite in order to use the kitchen and bathroom facilities which they did on a regular basis. I am also not satisfied that the Applicant was given exclusive possession and use of the basement suite, free from the Respondents' use, and free from entry into the suite without any notice.

The Respondent testified that they often use the bathroom and kitchen facilities in the basement suite and this is further supported by the Applicant's testimony that he was not happy with the Respondents being in the basement suite which was the reason why he wanted to address these issues in this Application. When the evidence provided by two parties conflicts and results in one parties word against the other, the Applicant bears the burden of proof in the application. In this case, I am not satisfied that the Applicant has disclosed sufficient evidence to show that the Act does apply. As a result, I find that based on the above reasons, the Act does not apply and therefore the Residential Tenancy Branch does not have jurisdiction in this tenancy.

The Applicant's application is dismissed pursuant to section 62(4) (b) of the Act. However, the Applicant is at liberty to seek advice in relation to pursuing these matters using other legal remedies.

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: April 02, 2014

Residential Tenancy Branch

