



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, FF

Introduction

This hearing dealt with two related applications. One was an application by the tenant for a monetary order; the other was an application by the landlord for a monetary order. Both parties appeared and had an opportunity to be heard. As the parties and circumstances are the same for both applications, one decision will be rendered.

Issue(s) to be Decided

- Does the Residential Tenancy Branch have jurisdiction over this dispute?
- If so, is either party entitled to a monetary order?
- If so, in what amount?

Background and Evidence

The month-to-month tenancy commenced November 1, 2013. There is a written tenancy agreement. It described the rental unit as Room #2 in the basement of a house. According to the agreement rent included furniture, stove and oven, refrigerator and laundry (1 load/week).

The house in which the room is located is a two level house. The upper level has four bedrooms, kitchen, living and dining areas and bathrooms. The landlord lives in the upper level with her two special needs children.

The lower level has three bedrooms, a kitchen, living and dining areas, and a bathroom.

The landlord usually has three tenants living in the lower level, with a separate tenancy agreement for each tenant. Each tenant receives a key for their bedroom, which are individually keyed, and keys for the door from the lower level to the outside.

A door separates the two levels. The door can be locked from the upstairs side but not from the lower level. This door does not have a keyed lock.

Both parties testified that the residents of the lower level never used the upstairs kitchen or bathrooms. The tenant testified that she had been upstairs on a very limited number of occasions and only on the express invitation of the landlord.

The landlord's evidence is that at the start of the tenancy she explained to each tenant that they were renting the bedroom only and were sharing access to the kitchen, bathroom, and living areas of the lower level. The tenant testified that she thought the residents of the three lower level bedrooms were to have exclusive use of the kitchen, bathroom and living areas of the lower level.

The landlord's evidence was that her arrangement was to supply toilet paper, laundry soap, garbage and recycling bags for the lower level. However, she quit supplying toilet paper shortly after the tenant moved in because all of the toilet paper disappeared. She also quit supplying laundry detergent when another tenant used half of the laundry detergent in one load. The tenant testified that the landlord never supplied toilet paper.

The landlord testified that she occasionally used the downstairs kitchen on special occasions, most notable last Christmas, and that every month she would use the stove to make sure it was working. The tenant testified that last Christmas was a shared event; the landlord cooked the turkey upstairs; she cooked the vegetables downstairs; and they all ate together downstairs. The tenant testified that the landlord only started using the stove in mid-April and then only a couple of times.

The landlord testified that she was in the rental unit every day cleaning the common areas. In support of her position that she was the housekeeper of this area she filed a letter from a previous downstairs tenant who stated that the landlord: "always accessed the common facilities such as the living room, kitchen and bathroom and used these facilities. Furniture and cooking utensils were provided by [the landlord]. She was also the housekeeper of the basement of the house."

The tenant does not deny that the landlord was in the lower level every day. In fact she has applied for damages for loss of quiet enjoyment because of the landlord's "ongoing illegal entry to our suite without any notice checking the cleanliness, garbage, telling us what we should recycle, see if we had guests, tec. She never once gave us 24 hours written notice or knock. She would enter from the inside door any time she wanted. [The landlord] treated our home as if it were hers to come and go as she pleased." The tenant denies that the landlord ever did any cleaning in the common area.

There is no evidence of the landlord entering any of the three bedrooms until the day she changed the locks.

The landlord says she always stored her personal items such as suitcases and boxes in the lower level.

Analysis

Section 4(c) of the *Residential Tenancy Act* specifically exempts living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation from the jurisdiction of the Residential Tenancy Branch.

The tenancy agreement described the rental unit as Room #2, not the basement. The evidence shows that the landlord and the downstairs tenants did share the use of the downstairs kitchen to some degree. It also shows that while the landlord treated the kitchen, dining and living areas of the lower level as an extension of her home she did not enter the tenants' bedrooms without their permission. This is consistent with the tenants having been designated exclusive use and possession of their bedroom only.

I find that section 4(c) does apply to this tenancy and that the Residential Tenancy Branch does not have jurisdiction over this dispute.

Conclusion

Jurisdiction over these disputes is declined. Both applications are 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 *Residential Tenancy Act*.

Dated: August 25, 2014

Residential Tenancy Branch

