



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, CNC, OLC, LRE, FF

Introduction

This hearing was convened by way of conference call in response to the Applicant's application to dispute an additional rent increase; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; to cancel a Notice to End Tenancy for cause; for an Order for the Respondent to comply with the *Act*, regulations or tenancy agreement; for an Order to suspend or set conditions on the Respondents right to enter the rental unit; and to recover the filing fee from the Respondent for the cost of this application.

The Applicant and Respondent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other. The Respondent and Applicant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The Respondent raised the issue of jurisdiction at the outset of the hearing. The Respondent testified that he is the owner of this double width mobile home which has three bedrooms and two bathrooms. The Respondent uses one section of the mobile home which consists of a bedroom, en-suite bathroom and a living room. Contained within this living area is a bar sized small sink, a toaster, coffee maker, microwave and

small bar sized fridge. The Respondent rents out the other two bedrooms which also have a small living room to two roommates under shared accommodation. The Respondent refers to his documentary evidence showing the original advertisement that states that is shared accommodation in three bedrooms, two bathrooms like new home with beautiful lake and city views; Furnished private sitting room and bedroom; Includes utilities, laundry and cable; Quiet room, room not private, no private bath.

The Respondent testified that he uses his private section of this home at least two to three times a month as the Respondent works out of town and has another residence there that is used while he is working. The Respondent testified that the home has a kitchen, laundry room, second bathroom and living room which are common areas between all three occupants including the Respondent. The Respondent testified that he does not have to use the second bathroom very often or the kitchen but if he needs to use the stove he will access the kitchen to cook whenever he is in residence. The other occupants were aware that this is a shared area for everyone to use. The Respondent testified that he has not used the kitchen often due to this Applicants mess and the Respondent finds it uncomfortable to access the common areas if this Applicant is at home.

The Respondent testified that due to these shared facilities the Respondent never had the intention of creating a tenancy but rather a roommate scenario. The Respondent also testified that the Applicant and any other roommate do not have exclusive possession of the common areas. The only areas which are private are the Applicants and any roommates own bedroom and living room. The Respondent testified that he does not have to give written notice to enter the common areas. The Respondent testified that therefore this is not a tenancy, there is no tenancy agreement in place and the Residential Tenancy Office does not have jurisdiction in this matter.

The Applicant disputed the Respondent's claims concerning jurisdiction. The Applicant testified that the Respondent never had this arrangement with the Applicants. The Respondent has his own private space and keeps the door locked. The Applicant

testified that the Respondent has only just started to use the kitchen facilities since the Applicant has served the Respondent with the hearing documents to circumnavigate the Act. The Applicant testified that the Respondent did not cook in or clean the kitchen prior to service of the hearing documents and the Applicant has never seen the Respondent use the second bathroom. The Applicant testified that she works 36 hours a week and does not know if the Respondent has used the kitchen or bathroom when the Applicant has been at work. The Applicant referred to the wording of the Respondent's advert and testified that the shared accommodation refers to the Applicants sharing the common areas as roommates and not the Respondent.

Analysis

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 Applicant and Respondent provided conflicting evidence around the type of tenancy and the issue of jurisdiction. No tenancy agreement was completed by the parties and the evidence, on the balance of probabilities, indicates that the Respondent, who is the owner of the property, is free to use the common areas of the property which include the second bathroom and kitchen facilities. The *Act* does not specify how often the shared facilities have to be used by the owner of the property and while the Applicant testified that the Respondent has only just started to use the kitchen the Applicant has no evidence to support this as the Applicant agreed that she is at work 36 hours a week and the Respondent testified that he is reluctant to use the kitchen when the Applicant is at home.

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. The Respondent retains control and access to the common areas and

is free to use the kitchen and second bathroom in these areas. 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 matter.

The Applicant's application is dismissed pursuant to section 62(4)(b) of the *Act*. However, the Applicant is at liberty to pursue 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: October 03, 2014

Residential Tenancy Branch

