



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: DRI, MNDC, RPP, LRE, LAT, RR, FF, O

Introduction

This hearing was held to deal with an Application for Dispute Resolution by the tenant seeking the following:

- An Order compelling the Landlord to return the Tenant's personal property;
- An Order to suspend or set conditions on the Landlord's right to enter the rental unit;
- An Order to authorize a Tenant to change the locks to the rental unit;
- A Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement;
- An Order allowing a Tenant to reduce rent for repairs, services or facilities agreed upon but not provided;
- Reimbursement by the Landlord for the cost of the filing fee paid by the Tenant for this application;

PRELIMINARY MATTERS

Serving Landlord's Evidence

The tenant made the application for dispute resolution on October 7, 2014. The landlord submitted an evidence package by fax received by Residential Tenancy Branch on November 12, 2014. Although this was within the statutory deadline of 5 days prior to the hearing, the evidence from the respondent was not received until over a month after the tenant's application was made. The landlord testified that they also mailed evidence consisting of photographs on the same date, but these photos were not found in the file. According to the landlord, the tenant was served in person by the landlord and accompanied by a witness, on November 12, 2014 with the contents of both of the landlord's evidence packages.

The tenant testified that he was not served with the evidence at all. The tenant testified that, on the November 12, 2014, he was away overnight visiting a friend.

It was determined that the landlord's evidentiary material submitted to the file on November 12, 2014 would not be considered. However, the landlord was given ample opportunity to provide verbal testimony and the tenant was also able to respond to this testimony.

Jurisdiction

At the outset of the hearing the landlord challenged my jurisdiction to hear and consider this dispute on the basis that the criteria exempting this tenancy from oversight by the Residential Tenancy Branch has been satisfied.

The landlord testified that they are the owner of the buildings on the property and the landlord lives in the main house where a full bathroom is located. The landlord testified that the tenant resides in another building on the property that contains a "kitchenette" as well as a two-piece bathroom that has a sink and toilet but no bathtub or shower.

The landlord testified that, as part of the tenancy, the tenant has had the use of the landlord's main-house bathroom and has used the shower facility on a regular basis.

The landlord's first witness stated that, while she did not live in the house, she is a close friend of the landlord and frequent visitor. The witness stated that the landlord kept certain entry doors of the main house where the landlord lives, unlocked and pointed out that the tenant could easily access the landlord's bathroom to shower. The witness stated that she personally witnessed the tenant using the landlord's bathroom facilities to take showers and also saw that the tenant kept his own products and personal items stored in the landlord's bathroom.

The second witness acknowledged that he had never personally witnessed the tenant using the landlord's bathroom, but was told about the tenant's use of the bathroom and kitchen by the landlord.

The tenant confirmed that his rental unit only had a two-piece bathroom and agreed that he had used the landlord's shower when the tenancy first began. The tenant stated that he was not allowed to use the facilities once he and the landlord were no longer on good terms. The tenant testified that he never had a key to the landlord's house and that the landlord locked the home when she was out which restricted his access.

The tenant pointed out that the written tenancy agreement, a copy of which is in evidence, makes no mention of sharing the bathroom or kitchen. The tenant also pointed out that the landlord denied him access to the bathroom with the shower some time ago and told him to move out.

The landlord stated that the advertisement for the rental unit specifically stated that the shower and other facilities were shared.

In regard to the kitchen facilities, the landlord testified that the tenant used the kitchen in the main house as the kitchenette in the tenant's rental unit did not have cooking facilities except a toaster oven. The landlord testified that the tenant had to cook and wash his dishes in the main kitchen.

The tenant denied that he used the landlord's kitchen as part of his tenancy.

The tenant's position is that his rental unit is self-contained and it was never a necessity for him to use the landlord's bathroom as he had his own.

The landlord pointed out that she is not permitted under municipal bylaws to rent out self-contained units and this is why the tenant's unit must rely on some facilities such as the stove, kitchen sink and shower in the main house occupied by the landlord.

The landlord pointed out that section 4(c) of the Residential Tenancy Act states that the Act does not apply to the following: (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation, (my emphasis). The landlord's position is that this exemption renders the tenancy outside the jurisdiction of the Act.

I accept the testimony of both parties that the tenant did not have a shower in his unit and that the tenant had used the landlord's bathroom for this purpose on numerous occasions.

With respect to the tenant's allegation that the landlord is attempting to avoid the Act, by purposely imposing terms that would place this tenancy outside of the legislation, I find that section 5 of the Act does provide that landlords or tenants may not avoid or contract out of the Act or Regulation and that any attempt to avoid or contract out of the Act or Regulations is of no force or effect.

However, in the case before me, I do not find it necessary to make any determination about whether or not the landlord's motive is to purposely avoid the Act.

Based on the evidence and proven facts before me, I do find the following:

1. Testimony of both establish that there was a valid mutually agreed-upon term that the tenancy would include a shared bathroom with the owner, even though only the shower is involved.
2. Given the above I find that this tenancy relationship not governed by the Residential Tenancy Act,
3. As Arbitrator, delegated by the Director, I find that I do not have the statutory authority and jurisdiction under the Act to hear and determine this dispute.

For the above reasons, I decline to hear or consider this application and dispute on the basis that the tenancy relationship before me is not governed by the Residential Tenancy Act and is therefore beyond my jurisdiction to determine.

Conclusion

The hearing did not proceed and no determination is to be made as it was established that this tenancy relationship is not governed by the Residential Tenancy Act.

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: November 21, 2014

Residential Tenancy Branch

