



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP, FF, O

Introduction

This matter dealt with an application by the Tenant for compensation for loss or damage under the Act, regulations or tenancy agreement, to recover personal property, to recover the filing fee and for other considerations.

At the start of the conference call the Respondent's evidence submission questioned whether the Residential Tenancy Branch had jurisdiction or not, because the Respondent claimed there was a shared kitchen between the Landlord and the Tenant.

The Tenant said he did not use the kitchen in the upper main level part of the house. The Tenant continued to say that he and his two sons rented the unfinished basement and had a hot plate and fridge as their kitchen facilities. As well the Tenant said there was a locking door between the upper and lower units and there was a separate lower unit entry door.

The Respondent said there was no locking door between the upper and lower floors in the house and the lower entry is a sliding patio door that only locks from the inside. The Respondent continued to say that the residential area the house is located in does not allow secondary suites and the basement in this unit is not a suite. Further the Respondent said the move in condition inspection report says the Tenant has use of the upstairs/main level kitchen and the main level dining room. As well the tenancy agreement includes the stove, refrigerator, dishwasher and microwave. The Respondent said that this situation is shared accommodation not a tenancy and as such the Residential Tenancy Branch does not have jurisdiction.

The Tenant said that he had permission to use the main level kitchen and dining room but he did not use the kitchen or dining room at any time in the tenancy. The Tenant insisted that he did not use the kitchen or dining room on the main level.

I have reviewed the video tapes submitted by both parties and reviewed all the written evidence submitted as well as oral testimony. The move in condition inspection report clearing states the Tenant had use of the kitchen and dining room on the upstairs main level of the house. As well the tenancy agreement indicates a stove, dishwasher and microwave were included in the rent; therefore I accept the evidence submitted by the

parties that shows the intent of the tenancy agreement and the move in condition inspection report was to establish a shared kitchen and dining room on the main level of the house for the Landlord and the Tenant. In this situation the Tenant testified that he did not use the kitchen or dining room on the main level, but the Tenant did not have any corroborative evidence or witness testimony to support his claim. Therefore I find this situation is shared accommodation not a tenancy.

Section 4(c) of the Act states that the Act does not apply to situation where there is a shared kitchen or bathroom with the owner of the property. The Tenant submitted a letter from the Landlord that stated she was a joint owner of the rental unit. As well the Landlord made provisions in the tenancy agreement and the move in condition inspection report to share the kitchen and the dining room with the Tenant. Consequently I find there is no tenancy between the Applicant/Tenant and the Landlord. Therefore I do not have jurisdiction to make a finding in this matter. The Applicant may want to seek legal advice to determine how to proceed with his claims.

In the absence of evidence to show there is a tenancy between the Applicant and Landlord or the Respondent the Residential Tenancy Branch does not have jurisdiction in this situation. I dismiss the application as I find no authority to decide this matter under the *Residential Tenancy Act*.

Conclusion

The application is dismissed for lack of 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*.

Dated: December 03, 2014

Residential Tenancy Branch

