



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

O, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- other remedies, identified as whether this tenancy falls under the jurisdiction of the *Act*, pursuant to section 4(c);
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The two landlords (individually "landlord SCC" and "landlord IL" and collectively "landlords") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

Landlord IL testified that the tenant was served personally with the landlords' notice of application for dispute resolution hearing package ("Application") on January 6, 2015. The tenant confirmed receipt of the landlords' Application. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the landlords' Application on January 6, 2015.

Issues to be Decided

Is this tenancy governed by the *Act*?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

Landlord IL testified that this tenancy began on August 15, 2011 on a month to month basis. Monthly rent in the amount of \$520.00 is payable on the first day of each month. A security deposit of \$250.00 was paid by the tenant and the landlords continue to retain this deposit. Landlord IL testified that a written tenancy agreement was completed on the Residential Tenancy Branch (RTB) form but that it is not currently being used to govern this tenancy.

Landlord IL testified that the residential property is a 2 level house, consisting of a basement level and a main floor level. Both parties agreed that the tenant occupies one of two bedrooms on the basement level. The landlords occupy the main level of the house. There is a kitchen and bathroom on each level of the house.

Both landlords testified that they share kitchen and bathroom facilities with the tenant and therefore, under section 4(c), the *Act* does not apply to this tenancy and the RTB does not have jurisdiction over this tenancy. The landlords stated that they require a determination as to whether the *Act* applies, so that they are aware as to whether to follow the *Act* or if they should follow the common law, if the *Act* does not apply. The landlords indicated that they initially thought that the *Act* applied, but do not believe that the *Act* applies now, as they have reviewed section 4(c) of the *Act*. The landlords, in their Application, provided a Mutual Agreement to End Tenancy on the RTB form and signed by both parties, for the tenant to vacate the rental unit on May 31, 2013. Landlord IL indicated that this mutual agreement was not followed by the tenant, which demonstrates that the tenant was aware that the *Act* did not apply to this tenancy.

The tenant stated that the landlords attempted to increase his rent in January 2015, and when he asked for proper notice of the rent increase, the landlords served him with a 3 month notice to end tenancy on an RTB form. The landlords testified that they attempted to increase the tenant's monthly rent by \$20.00 and the tenant initially did not dispute it. The tenant indicated that he is not concerned as to whether the *Act* applies, as he intends to vacate the rental unit and to consult a lawyer, if necessary, to determine whether the *Act* or the common law applies to this tenancy. The tenant stated that the landlords made an unnecessary and time-consuming application for their own purposes.

Both landlords testified that they are the owners of the residential property. The tenant does not dispute their ownership. Both parties agree that they share the same basement level kitchen. The tenant testified that when this tenancy began, he was aware that the kitchen was to be a common area shared by both parties. Both parties agree that they store their food in the same fridge, they use the same double kitchen sink, where one side is to be clear for the landlords to fill water, and they share the kitchen cupboards and drawers to store utensils and food. The tenant testified that both parties share the same kitchen microwave.

The landlords testified that they share the same basement level bathroom with the tenant. The tenant disputes that the landlords share the same bathroom. The landlords testified that they keep their supplies in the same bathroom cabinet as the tenant, they use the same toilet occasionally, and they use the same bathroom sink frequently. The landlords provided a photograph, which they say shows the supplies that they store in the same bathroom cabinet as the tenant. The tenant testified that the photograph only shows his supplies and that the landlords do not store their supplies in his bathroom cabinet. Both parties agreed that the landlords do not use the basement level bathroom shower.

The landlords also seek to recover the filing fee for their Application, from the tenant.

Analysis

Section 4(c) of the *Act*, outlines a tenancy in which the *Act* does not apply:

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

It is undisputed that the landlords own this living accommodation and that both parties share the same kitchen facilities. Although it is disputed as to whether the bathroom facilities are shared, the above provision states that either bathroom OR kitchen facilities can be shared.

Accordingly, I find that I am without jurisdiction to consider the landlords' Application as the *Act* does not apply to this tenancy because it is excluded by section 4(c) of the *Act*. Therefore, I cannot make any award with respect to the \$50.00 filing fee sought by the landlords.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this Application. I cannot make any award with respect to the filing fee sought by the landlords.

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: January 26, 2015

Residential Tenancy Branch

