



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, for a monetary order for the return of double the security and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be Decided

Does this dispute fall within the jurisdiction of the *Residential Tenancy Act*? Is the tenant entitled to a monetary order?

Background and Evidence

The rental unit consists of a furnished room in a duplex that is owned by the landlord. The part duplex that the landlord and tenant occupy consists of six bedrooms on three levels. The landlord testified that the main door opens onto the ground level which has two bedrooms that she rents out to separate tenants, as furnished rooms with common facilities. The tenants of the ground level share a common area that consists of a kitchen, living room, dining room, laundry and washroom. All the occupants of the home have access to this common area. The landlord's bedroom is located on the upper level.

The landlord testified that she is the owner of the entire duplex and rents out the other half of which is completely self-contained. She also stated that she occupies a bedroom and retains access and use of the common areas of the part of the duplex that contains the dispute rental unit.

The landlord testified that she meets with contractors in the living room on the ground level and occasionally uses the coffee maker. She testified that due to mobility issues she uses the washroom on the ground floor, frequently.

The tenant argued that he has never seen the landlord using the common areas but agreed that he saw her using the washroom on one occasion. Neither party filed documentary evidence to support their testimonies.

Analysis

Based on the sworn testimony of both parties, I find that the landlord is the owner of the entire duplex. I further find that the landlord lives on the upper floor of the part duplex in which the rental unit is located. Even though the tenant denied having observed the landlord use the common area, he agreed that he had seen her using the common washroom on one occasion.

Based on the above facts I find on a balance of probabilities that it is more likely than not that the owner and tenant occupy different rooms in the home and share the kitchen and washroom.

Section 4 of the *Residential Tenancy Act*, addresses what the *Act* does not apply to. It states that the *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation

Conclusion

The circumstances of the dispute do not fall within the jurisdiction of the *Act*, and the application must therefore be dismissed. The tenant is at liberty to pursue other remedies under common law.

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: April 01, 2015

Residential Tenancy Branch

