



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, ERP, RP, PSF, LRE, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a Notice to End Tenancy for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the Act, regulations or tenancy agreement; for an Order for the landlord to make emergency repairs for health or safety reasons; for the landlord to make repairs to the unit, site or property; for an Order for the landlord to provide services or facilities required by law; for an Order to suspend or set conditions on the landlord's right to enter the rental unit; and other issues.

The tenant and one of the landlords attended the conference call hearing and gave sworn testimony. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence.

Preliminary Issues

The landlord raised the issue of jurisdiction at the outset of the hearing. The landlord testified that the other landlord named on the application is the owner of the property and they are both landlords. The tenant has her own room and shares a bathroom with the other boarders and the landlords. The landlords also have bathroom facilities upstairs

but are at liberty to use the shared bathroom whenever they are on that level of the property and they have done so on a regular basis.

The landlord testified that due to these shared facilities the landlords only recently found out that the tenancy does not fall under the *Act* and is rather that of a boarding house. The tenants do not have exclusive possession of the bathroom. The landlord 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 tenant disputed the landlord's claims concerning jurisdiction. The tenant testified that the landlords have their own bathroom facilities and do not need to share this bathroom with the tenants. It is used by the tenant and the other tenants living in the property. The tenant testified that she has never seen the bathroom being used by the landlords.

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 tenant and landlord 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 landlord named on the application is the owner of the property and is free to use the bathroom facilities in the property. The *Act* does not specify how often the shared facilities have to be used by the owner of the property.

When the evidence provided by two parties conflicts and results in one party's word against the other, the Applicant bears the burden of proof in the application. In this case, I am not satisfied that the tenant has sufficient evidence to show that the *Act* does

apply. The landlords retain control and access to the bathroom shared by the tenants and the landlords are free to use the bathroom in this area. 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 parties attempted to present evidence concerning this application. I explained to the parties that I must decline to hear any further evidence as I do not have jurisdiction to make a decision on this matter. I further explained to the parties that they are at liberty to pursue these matters using other legal remedies.

The tenant's application is dismissed pursuant to section 62(4)(b) of the *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: June 03, 2015

Residential Tenancy Branch

