



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

RR and LAT

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Applicant applied for authority to reduce the rent and for access to the rental unit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Applicant stated that on May 19, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Applicant submitted to the Residential Tenancy Branch on May 19, 2015 were personally delivered to the Respondent's place of business. The Respondent stated that these documents were received by an employee on May 20, 2015, who gave them to her. As the Respondent acknowledged receiving these documents, they were accepted as evidence for these proceedings.

On May 25, 2015 the Applicant submitted three documents to the Residential Tenancy Branch, which the Applicant wishes to rely upon as evidence. The Applicant stated that these documents were personally delivered to the Respondent's place of business on May 22, 2015. The Respondent stated that these documents were received on May 23, 2015. As the Respondent acknowledged receiving these documents, they were accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Applicant entitled to a rent reduction?

Is there a need to issue an Order requiring the Respondent to provide access to the rental unit?

Background and Evidence

The Respondent and the Applicant agree that the Applicant has lived in this residential complex on a variety of occasions and that he most recently moved into a bedroom of the unit in the fall of 2014.

The Applicant stated that:

- during his most recent occupancy there were a total of three people living in the upstairs of the building, including the Applicant;
- the Respondent operates a business on the main floor of the building;
- during his most recent occupancy there was one person living in the basement of the building;
- during his most recent occupancy all four people occupying the building shared one kitchen and two bathrooms, although at some point in his occupancy he was denied access to the lower bathroom;
- the Respondent did not live in the rental unit during his most recent occupancy;
- the Respondent has lived in the rental unit and shared the kitchen/bath with him prior to his most recent occupancy, for a total of approximately one year;
- the Respondent maintains another residence in a neighbouring community;
- prior to his recent occupancy the Respondent has lived in the rental unit for up to three months at a time.

The Respondent stated that:

- she owns the residential complex;
- during the Applicant's most recent occupancy there were a total of four people living in the upstairs of the building, including the Applicant and the Respondent;
- she operates a business on the main floor of the building;
- during the Applicant's most recent occupancy there was one person living in the basement of the building;
- during the Applicant's most recent occupancy all five people occupying the building shared one kitchen and two bathrooms;
- for many years she has lived part time in this building and part time in a neighbouring community;
- her husband owns the residence in a neighbouring community and she has been divorced from him for approximately 18 years;
- she lives in the neighbouring community on a part-time basis for the purposes of assisting her former spouse with the farm; and
- she does not believe this living accommodations fall under the jurisdiction of the *Residential Tenancy Act (Act)*.

The Witness for the Respondent stated that:

- he has lived in this building for approximately four years;
- the Applicant lived in this building during his occupancy; and
- for the duration of his occupancy the Respondent has maintained a room in the upper portion of the building and has periodically resided in that room.

The Applicant called a witness with the initials "J.R.". I dialed the telephone number for this individual, as provided by the Applicant; however that individual no longer resided at the number provided. The person answering the telephone attempted to contact this individual by text message for the purposes of locating an alternate phone number but was unable to provide an alternate phone number prior to the conclusion of the hearing. The Applicant was unable to provide an alternate phone number for this individual.

The Applicant called a witness with the initials "C.L.". I dialed the telephone number for this individual, as provided by the Applicant, however the person answering the telephone advised

me this individual was not at home. The Applicant was unable to provide an alternate phone number for this individual.

Analysis

Before considering the merits of the Application for Dispute Resolution I must determine whether this application has jurisdiction under the *Act*. Section 4 of the *Residential Tenancy Act* (*Act*) stipulates that the *Act* does not apply to “living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation”.

I favour the testimony of the Respondent, who stated that she maintains a room in the upper portion of the building and that she periodically shares the kitchen and bathrooms with the people living in the building, over the testimony of the Applicant, who stated that the Respondent has not lived in the building during his most recent occupancy.

I favoured the testimony of the Respondent, in large part, because the testimony of the Witness for the Respondent corroborated the Respondent’s testimony and refuted the Applicant’s testimony.

I favoured the testimony of the Respondent, in part, because it was delivered in a forthright and direct manner. I found her to be a credible witness and I found her version of events had the “ring of truth”. Although the Applicant does not acknowledge the Respondent has been recently living in the building, he does acknowledge that she has lived in the building in the past, which gives credibility to her version of events.

In determining this matter I note that the *Act* does not require an owner to live in the building on a full time basis. I therefore find that the *Act* does not apply to this living arrangement, pursuant to section 4 of the *Act*.

Conclusion

As the *Act* does not apply to these parties, I find that I do not have jurisdiction in this matter and I dismiss the Application for Dispute Resolution.

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: July 07, 2015

Residential Tenancy Branch

