



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes cnc, olc, rp, opt, rr, o, opc, ff

Introduction

The party identified as the “tenant” applies for a variety of orders, including an order cancelling a One Month Notice to End Tenancy that was given to the tenant.

The party identified as the “landlord” applies for an Order of Possession, base upon the One Month Notice.

Issue(s) to be Decided

1. Is this a tenancy to which the Residential Tenancy Act applies?
2. If so, is the subject Notice effective to end the tenancy, or should the Notice be cancelled and the tenancy continue?

Background and Evidence

A significant volume of evidentiary material was provided by the tenant for this hearing, and both parties gave oral testimony. It is not necessary in this case to recite the nature or content of all of that evidence, and I have summarized the critical facts as follows.

The subject living accommodation rented by the tenant is a bedroom on the upper floor in a home owned by the landlord’s, and in which the landlord also reside, although on the bottom level. The tenant moved in May 1, 2013. The tenant pays rent of \$500.00 which sum includes heat, electricity, cable and wifi. The tenant has exclusive use of the rented bedroom, and is also permitted to store some items outside his room. He uses a washroom on the upper floor, and was told by the landlord when the tenancy began that occasionally others may also use the upper washroom. At the time the tenant moved in, a granddaughter of the landlord also resided on the upper level, and shared the use of the washroom for a period. Occasionally the male landlord has used the upper washroom. When the landlord’s daughter comes home, she occasionally uses the upper washroom. Currently, a different granddaughter resides on the upper floor of the landlord’s home and she regularly uses the upper washroom. Although she pays something to the landlord, he does not consider her to be a tenant. Rather, the landlord says, “she is family”.

The tenant admits that when the tenancy began, he was told verbally that others might use the upper washroom, but he understood this would occur infrequently. The tenant denies that his conduct warrants an ending of his tenancy.

In May, 2015, the landlords gave the tenant a One Month Notice to move out on June 30, 2015, and have now applied for an Order of Possession based upon that Notice. The tenant has not moved out, but has filed a claim for an order to cancel the Notice, which he submits has no merit.

Analysis

The applications by the parties are made under the Residential Tenancy Act, and my authority to arbitrate disputes as between landlords and tenants is derived from that legislation. The preliminary issue I must determine in the present case is whether the Residential Tenancy Act in fact applies to this living accommodation. If that legislation does not apply, then I have no authority (or “jurisdiction”) over this living arrangement, and no authority to make any binding orders regarding this tenancy or living arrangement.

The key applicable section of the Residential Tenancy Act is section 4(c) of the Act, which states that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of the accommodation. The issue before me is whether the facts demonstrate that the tenant shares bathroom facilities with the owner. I have determined that the answer to this question is yes. There is no dispute that the named landlords are the owners of the home in which the tenant resides. I accept that the tenant was told by the male landlord at the time that the tenancy agreement was made that others would also occasionally use the upper washroom. I further accept that the male landlord himself occasionally uses the washroom. While the tenant submits that the written agreement (which references the “upper suite”) could be interpreted to mean he is renting the entire upper floor, it was clear right from the time he began to rent that another person (the landlord’s granddaughter) was temporarily residing on the upper floor, and had the right to do so.

Section 4(c) imposes no conditions as to the amount of usage made by the owner of the subject washroom, only that the usage be shared. Although the male landlord in this case personally uses the washroom infrequently, I accept that he has the legal right to do so under the terms of the agreement with the tenant, and has the right to permit others to use it as well.

Based upon these factors, I find that the Residential Tenancy Act does not apply to this tenancy. This is not a “residential tenancy” as contemplated by the Act, and therefore the rights and obligations under the Act do not apply. I find the tenant to be an occupant at the will of the landlords, and the ordinary laws of license and trespass apply to this occupancy. As the Residential Tenancy Act does not apply, I have no authority to make the orders requested by the parties.

Conclusion

Jurisdiction over this claim is denied.

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 09, 2015

Residential Tenancy Branch

