



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a tenant's application for a Monetary Order for return of double the security deposit and damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Issue - Jurisdiction

The landlord submitted that the Act does not apply to the living arrangement between the parties pursuant to section 4(c) of the Act which provides:

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

The landlord submitted that the tenant had exclusive use of a bedroom and bathroom on the main floor of the house and that he had shared access to the kitchen and other living areas on the main floor with her and another roommate. The landlord submitted evidence that she is the owner of the residential property.

The tenant testified that he never saw the landlord cook, eat, or do dishes in the kitchen and that she used the kitchen in the basement. The landlord acknowledged that there are cooking facilities in the basement and she explained that she used those facilities when the tenant was in the main floor kitchen to give him privacy; however, she had access to and use of all areas of the house except for the rooms that were for the tenant's exclusive use, or the other roommate's exclusive use. The landlord pointed to the "Shared Accommodation Agreement" the parties executed as evidence that the

kitchen was a common area. The landlord argued that the agreement is between the tenant and the landlord meaning the kitchen is a shared space between the tenant and the landlord.

The tenant acknowledged that he did not spend much time in the common areas but that he did see the landlord in the main floor kitchen and that she did flower arranging in the main floor kitchen.

Based upon the submissions of both parties, I accept that the landlord had the right to use the kitchen on the main floor based upon the agreement between the parties and that she did so during the tenancy even if it were not for the purpose of cooking or eating meals. Section 4 of the Act does not specify that the kitchen must be used for cooking and eating, merely that the owner and tenant share the kitchen facilities. I accept that a kitchen may be used for many purposes and if the landlord used the same kitchen as the tenant for purposes of flower arranging, or what have you, then I am satisfied the owner and the tenant shared the same kitchen facilities. Accordingly, I find the Residential Tenancy Act does not apply to this living arrangement and I do not have jurisdiction to resolve this dispute.

The tenant was informed of right to pursue this matter in the appropriate forum.

Conclusion

The landlord is the owner of the property and shared a kitchen facility with the tenant meaning the Act does not apply to this living arrangement and I have decline jurisdiction to resolve this dispute.

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: August 12, 2015

Residential Tenancy Branch

