



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Applicant to cancel a notice to end tenancy and to dispute a rent increase. The Applicant also applied for “Other” issues which required a determination on jurisdiction in this matter.

One of the Applicants appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. There was not appearance for the Respondent during the 30 minute duration of the hearing.

Jurisdictional Issues

Before considering and dealing with the Application to cancel the notice to end tenancy and to dispute a rent increase, I first turned my mind to the issue of jurisdiction in this matter as this would determine if I had authority to hear and determine the Application.

The Applicant was invited to provide some background evidence and submissions in relation to this situation. The Applicant testified that he engaged into a verbal agreement on November 1, 2014 with the Respondent, who is the owner of the property, for the rental of one room. Rent for the room was \$400.00 which was payable on the first day of each month. The Applicant confirmed that no written tenancy agreement was completed but that he did pay \$400.00 as a security deposit to the Respondent at the start of the tenancy. The Applicant confirmed that he had vacated his room on August 7, 2015 because the Respondent threatened to illegally evict him.

The Applicant was asked to describe the layout of the property. The Applicant testified that this was a detached duplex dwelling with a separate upper and lower portion of the home. The upper portion of the home comprised of two levels. The first level contained a room which the Applicant rented. The second floor of the upper portion of the home comprised of three bedrooms, a kitchen and a bathroom. The Applicant confirmed that

two of the three bedrooms on the second floor of the upper portion of the home were rented to two other renters. The Respondent retained the third bedroom, which was the master bedroom.

The Applicant was asked to elaborate on the Respondent's bedroom. The Applicant testified that at the start of the tenancy, the Respondent informed him that the master bedroom was not going to be rented out and that it was going to be retained by the Respondent for his own use. The Applicant testified that the Respondent informed him that he would not be residing at the property as he lived and worked in another city and that he would only be coming to the property once a month to check on the home and visit relatives.

The Applicant testified that the Respondent attended the home about once a month and that he would stay overnight leaving in the early hours of the morning. The Applicant explained that the Respondent had his own bathroom suite which was in his master bedroom and the Respondent did not use the bathroom or kitchen facilities because these were only used by the two renters and the Applicant. The Applicant testified that to his knowledge the Respondent had no clothes in his bedroom and had no personal food stored in the kitchen. However, the Applicant did acknowledge that if the Respondent wanted to use the bathroom and kitchen facilities, the Respondent's access to these areas of the home was not restricted.

The Applicant argued that before he entered into this agreement he did ask the Respondent if he lived at the home. The Respondent informed him that he did not and that he would only be there once a month. The Applicant argued that he would not have rented out the bedroom had he known he was sharing a space with the Respondent and that jurisdiction in this case would not apply. The Applicant also argued that he had been given formal notices by the Respondent which pertained to the Act.

While there was no appearance by the Respondent for this hearing, I noted in the Applicant's e-mail evidence that the Respondent took the position that this tenancy was not covered under the Act. In an e-mail response to the Applicant dated August 2, 2015, the Respondent writes:

"...If I'm living in the same places as you are renting a room you aren't covered under the act".

[Reproduced as written]

Jurisdictional Analysis

Section 4(c) of the 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 accept the undisputed evidence that the Respondent in this case is the owner of the home to which this dispute relates to.

After carefully considering all of the evidence before me, I make the following findings. When the Applicant engaged into a verbal contract to take possession of the room in the Respondent's home, I find it was made clear to him that the Respondent would be coming back on a monthly basis to check on the property and to visit relatives. The Applicant confirmed that the Respondent did visit the home on a monthly basis, even though this was for a short period of time. Therefore, I find this is clear evidence that the Applicant did not have exclusive possession of the home.

Furthermore, Section 4(c) of the Act does not require that an owner be residing at the property permanently and that the owner must use the kitchen and bathroom facilities every day. The Applicant did not dispute the fact that although the Respondent had his own bathroom and did not use the kitchen facilities, the Respondent still had access to these areas in the home. Therefore, I find that the Applicants and the Respondent at the very least shared kitchen facilities. The Respondent also indicated in an e-mail response to the Applicant that he was living in the same space as the Applicant. Therefore, based on all of the above, I find I must decline jurisdiction in this matter. The Applicants are at liberty to seek alternative legal remedies to address this dispute.

Conclusion

For the reasons set out above, I decline jurisdiction in this matter.

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 19, 2015

Residential Tenancy Branch

