



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CATHAY REALTY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38.

The tenant did not attend this hearing, although it lasted approximately 30 minutes. The landlord PT ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she is the president of the landlord company named in this application and that she had authority to speak on its behalf as an agent at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on May 9, 2015, by way of registered mail. The landlord stated that the tenant was served at a forwarding address that was provided by the tenant to the landlord on March 2, 2015, at the beginning of this tenancy and again on May 9, 2015, the date the package was mailed out. The landlord provided a Canada Post receipt and tracking number to confirm service. The Canada Post website indicates that the package was successfully delivered to the tenant, who signed for the package on May 29, 2015. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on May 14, 2015, five days after its registered mailing.

Preliminary Issue – Jurisdiction to hear Matter

The landlord testified that this month-to-month tenancy began on March 3, 2015 and ended on April 26, 2015. Monthly rent in the amount of \$580.00 is payable on the third day of each month. A security deposit of \$290.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was provided for this hearing. The landlord confirmed that the tenant rented a room in a house. The landlord testified that she owns this house and that she personally occupies another room in the same house. The landlord stated that she shared a kitchen and bathroom with the tenant.

Analysis

Section 4(c) of the *Act*, outlines a tenancy in which the *Act* does not apply:

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...

It is undisputed that the landlord owns this living accommodation and that she shared the same kitchen and bathroom with the tenant. The landlord made this Application in the name of the corporate entity but confirmed that she is the president and directing mind of the company. For all intents and purposes of the *Act*, the landlord and the company are the same. The *Act* specifically excludes the owner of a rental unit who shares a kitchen and bathroom with the tenant. Accordingly, I find that I am without jurisdiction to consider the landlord's Application as the *Act* does not apply to this tenancy because it is excluded by section 4(c) of the *Act*.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this Application.

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: October 16, 2015

Residential Tenancy Branch

