



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, FF

Introduction

This hearing dealt with applications from both parties. The tenant applied for an order setting aside a notice to end this tenancy and the landlords applied for an order of possession. Both parties participated in the hearing held on this date.

This hearing was a re-hearing of matters which were heard independently on September 15, 2015. The applications were set down to be heard at two separate hearings. The landlords attended the hearing scheduled to hear their application and the tenant attended the hearing scheduled to hear his application. Two separate and conflicting decisions were issued and the landlords applied for a review of the decision issued on the tenant's application. In a decision dated September 18, 2015, the reviewing arbitrator determined that it was appropriate to re-hear both applications as they dealt with the same issue and a new hearing was set for today's date.

At the hearing, the parties agreed that the landlord had removed the tenant's belongings from the rental unit in September. The tenancy has ended and the matter at issue, which is the question of whether the tenancy should continue, is therefore moot. However, as further claims may be brought by the parties, I determined it was appropriate to determine whether this tenancy fell within the jurisdiction of the Residential Tenancy Act.

Issue to be Decided

Does this tenancy fall under the jurisdiction of the Act?

Background and Evidence

There is no dispute that there exists between the parties a tenancy agreement in which the rental unit is described as "the top floor master bedroom". The parties agreed that the landlords have the right to access the unit and use the bathroom and kitchen at any

time. The landlords claimed to have used the unit a number of times since the tenancy began in April 2015, but the tenant claimed that he had never seen the female landlord and had only seen the male landlord twice in the approximately 5 month long tenancy.

Analysis

Section 4(c) of the *Residential Tenancy Act* provides that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

The landlords ordinarily live in another province but specifically reserved for themselves use of the residential property so they could reside therein when they were in town. The tenant does not have exclusive possession of the entire residential property; rather, he has exclusive possession of one room and otherwise has no reasonable expectation of privacy in the remainder of the property.

Although the tenant has had to actually share the residential property on a very limited basis, I find that he does not have exclusive possession of the property and that the landlords have the right to access the property at any time. I find that section 4(c) operates to oust this tenancy from the jurisdiction of the Act. The parties should pursue any monetary claims they have against each other in Small Claims Court.

Conclusion

I find that this tenancy does not fall within the jurisdiction of the *Residential Tenancy Act*.

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 09, 2015

Residential Tenancy Branch

