



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNR, MNDC, FF
 Tenants: MNDC, O, CNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

Prior to the start of the hearing I had reviewed the evidence submitted by both parties, in particular the tenancy agreement. The tenancy agreement contained a clause stating that the kitchen and bathroom are shared by the landlord and the tenant.

During the hearing both parties confirmed that this was a term of the tenancy agreement. The landlord explained that because he still did work on the farm he required the use of the bathroom and kitchen while he was on the property.

The parties agreed that the landlord had not used either during the course of the tenancy.

Section 4 of the *Act* states that the *Act* does not apply to:

- a) Living accommodation rented by a not for profit housing cooperative to a member of the cooperative;
- b) Living accommodation owned or operated by an educational institution and provided by that institution to its students or employees;
- c) Living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation;
- d) Living accommodation occupied included with premises that
 - i. Are primarily occupied for business purposes, and
 - ii. Are rented under a single agreement;

- e) Living accommodation occupied as vacation or travel accommodation;
- f) Living accommodation provided for emergency shelter or transitional housing;
- g) Living accommodation
 - i. In a community care facility under the *Community Care and Assisted Living Act*,
 - ii. In a continuing care facility under the *Continuing Care Act*,
 - iii. In a public or private hospital under the *Hospital Act*,
 - iv. If designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
 - v. In a housing based health facility that provides hospitality support services and personal health care, or
 - vi. That is made available in the course of providing rehabilitative or therapeutic treatment or services;
- h) Living accommodation in a correctional institution;
- i) Living accommodation rented under a tenancy agreement that has a term longer than 20 years;
- j) Tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies; or
- k) Prescribed tenancy agreements, rental units or residential property.

While I accept the testimony of both parties that the landlord did not access the rental unit for the use of the kitchen or bathroom during the tenancy, I find the tenancy agreement granted the landlord the right to the use of these facilities. Whether the landlord chose to enforce his right was his own choice. As the tenancy agreement specifically states that the landlord and tenants shared the bathroom and kitchen of the house I find that *Act* does not apply.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to a monetary order for compensation and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 46, 67, and 72 of the *Act*.

Conclusion

Based on the above, I decline jurisdiction on the matters raised in both the landlord's and the tenants' Applications for Dispute Resolution.

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: December 08, 2015

Residential Tenancy Branch

