



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant and landlord attended the conference call hearing and gave sworn and affirmed testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Preliminary Issues

The landlord advised me there was an error in the last name of the landlord. The landlord provided the correct spelling of her last name. The parties did not raise any objections to the error being corrected and this has now been amended

The landlord raised the issue of jurisdiction at the outset of the hearing. The landlord testified that she is the owner of the property and resides in the property. Rooms were rented out to three tenants during the three week period that this tenant resided in the residential property. The tenant had her own room and shared a bathroom with the other boarders and the landlord. The landlord also had bathroom facilities upstairs, but regularly used the shared bathroom and TV in the basement.

The landlord testified that there is only one main kitchen in the property and the boarders are at liberty to use that kitchen at any time as they only have a microwave oven and fridge in the basement. The landlord testified that she does not think the tenant ever used the kitchen upstairs as she only lived in the property from June 01, 2014 to June 21, 2014.

The landlord testified that due to these shared facilities the tenancy does not fall under the *Act* and is rather that of a shared boarding house. The tenant did not have exclusive possession of the bathroom or kitchen. The landlord testified that therefore the Residential Tenancy Branch does not have jurisdiction in this matter.

The tenant testified that the landlord is the owner of the residential property and did use the bathroom in the basement on a regular basis during the three weeks the tenant lived in the property. The tenant disputed that she used the kitchen facilities upstairs and was not told it was a shared kitchen.

Analysis

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

In this case, I find that the tenant and landlord both provided testimony that the landlord is the owner of the property and did share the basement bathroom with the tenants. There is conflicting testimony regarding the shared kitchen facilities upstairs.

In light of the testimony before me, I have considered the matter of Jurisdiction in this matter. I find the landlord is the owner of the property and the bathroom facilities in the basement area of the property are shared with the landlord/owner of the property. I further find it is likely that the upper kitchen facilities are also a shared facility even if the

tenant did not take advantage of this during her three week tenancy. The *Act* does not specify how often the shared facilities have to be used by the owner of the property.

As a result, I find that based on the above reasons, the *Act* does not apply and therefore the Residential Tenancy Branch does not have jurisdiction in this matter.

The parties attempted to present evidence concerning this application. I explained to the parties that I must decline to hear any further evidence as I do not have jurisdiction to make a decision on this matter. I further explained to the parties that they are at liberty to pursue these matters using other legal remedies.

Conclusion

The tenant's application is dismissed pursuant to section 62(4)(b) of the *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: January 13, 2016

Residential Tenancy Branch

