



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, RR

Introduction

This hearing dealt with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, authorization to reduce rent payable. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Issue – Jurisdiction

My authority to resolve disputes is provided under the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act*. The tenant has made this application under the *Residential Tenancy Act*. Accordingly, I must be satisfied that the *Residential Tenancy Act* applies to the subject tenancy.

The *Residential Tenancy Act* applies to residential tenancy agreements between a landlord and a tenant; however, certain living accommodations are specifically exempt from the application of the Act. Section 4 provides for the living accommodations that are exempt from the application of the Act. Section 4(c) provides:

What this Act does not apply to

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

The tenant testified that when the tenancy commenced it was agreed that she would have use of a loft space in the house and share the kitchen and bathroom facilities with the landlord on the main floor of the house; however, the tenant claims that she has not used the kitchen and

bathroom facilities lately because the kitchen and bathroom are not kept sufficiently clean by the landlord. The tenant also testified that the respondent landlord is the owner of the property.

The respondent landlord confirmed that she is the owner of the property and testified that the tenant continues use the kitchen and bathroom on the main floor of the house which the landlord also uses.

I also heard that the parties had been through the dispute resolution process with the Residential Tenancy Branch on a previous occasion; however, I also heard that neither party raised the issue of jurisdiction with the Arbitrator or otherwise informed the Arbitrator that the landlord and tenant share the kitchen and bathroom. Section 64(2) of the Act provides that “the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.” Considering that the issue of jurisdiction, in particular the evidence concerning shared use of the kitchen and bathroom facilities, was not raised or explored with the Arbitrator hearing the previous dispute, pursuant to section 64(2) of the Act, I find the fact that another Arbitrator did not decline to accept jurisdiction does not bind me to accept jurisdiction. Accordingly, I have considered whether the Act applies to this living accommodation based upon the evidence before me.

Upon hearing from both parties, I find that the living accommodation provided to the tenant includes kitchen and bathroom facilities that are shared or have been shared with the owner of the property pursuant to the agreement between the parties. Accordingly, I find that this living accommodation is exempt from the application of the *Residential Tenancy Act* and neither party is bound by or entitled to the rights and obligations provided to landlords and tenants under the Act. Even if I accepted the tenant’s disputed position that she has not used the kitchen or bathroom facilities lately, I find the tenant’s decision not to use the kitchen or bathroom facilities that she has a right to use, and continues to have access to and use when she so choses, does not make the Act apply to this tenancy.

Having found that the *Residential Tenancy Act* does not apply to this living accommodation I decline to take jurisdiction to resolve this dispute.

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: March 23, 2016

Residential Tenancy Branch

