



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI

Introduction

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

- an order disputing an additional rent increase, pursuant to section 43.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. "Witness SG" testified on behalf of the landlord and both parties had an equal opportunity to question the witness. Witness SG confirmed that she is a friend, not a relative, of the landlord. This hearing lasted approximately 61 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord confirmed that she filed her own application for dispute resolution but that she was told it could not be heard at this hearing because it was too late to join it as a cross-application. The file number for that hearing on September 28, 2016 appears on the front page of this decision. The landlord said that she was told by the Residential Tenancy Branch ("RTB") that her file would be photocopied and all of her written evidence would be placed on the tenant's application file for this hearing. I advised the landlord that her file was not joined to be heard with the tenant's application and her written evidence was not in the tenant's file. The tenant said that he had only received the landlord's application two days prior to this hearing date, as the landlord said that she had filed it the week prior to this hearing. Accordingly, I advised both parties that I was only able to consider the tenant's application at this hearing as the tenant did not have proper notice of the landlord's application. I advised the landlord that I could not consider her own application evidence because it was not submitted for the tenant's application.

Preliminary Issue – Jurisdiction to hear Matter

The landlord raised an argument under section 4 of the *Act*, stating that the RTB has no jurisdiction to hear this matter because the landlord shares a kitchen and bathroom with the tenant. The tenant disputes the landlord's contention.

Both parties agreed that the tenant resides in the rental unit which is a room in a three-bedroom, two-bathroom townhouse. Another tenant lives in an independent basement suite, separate from the main townhouse level where the tenant lives.

Both parties agreed that the landlord owns the townhouse. Both parties agreed that the landlord previously lived in one of the rooms of the townhouse, not the basement suite, for four years during this tenancy but that she no longer lives there now. Both parties agreed that the landlord moved out of the townhouse approximately two years ago. The landlord said that she intends to move back into the townhouse in September or October 2016.

The landlord said that the current zoning bylaw for her townhouse only allows for shared accommodation and boarders. She said that she advertised the rental unit as shared accommodation and advised the tenant about this before he moved in. She confirmed that she does not have a written tenancy agreement with the tenant and she accepts rent money from him for the rental unit. The tenant did not dispute any of the above facts.

The landlord confirmed that she only left the rental unit because of a problem with another tenant but that it is still her home. She stated that all of her belongings are still in the townhouse and she uses the townhouse address for her mail. The landlord said that she visits the townhouse on a weekly basis and uses the same kitchen and bathroom as the tenant, while she is there. She explained that she cooks meals in the kitchen and shares dinners with the tenant in the kitchen. The landlord maintained that the tenant usually "sleeps all day" so she may not always see him when she visits.

The landlord said that she issued RTB notices to the tenant only as a precaution until this hearing occurred and a determination was made regarding jurisdiction. The landlord said that the notices are the subject of her upcoming hearing.

The tenant disputes that he shares a kitchen and bathroom with the landlord. The tenant said that the landlord comes to the townhouse to collect rent. He said that he has "never" seen the landlord use the kitchen and bathroom since she moved out. The tenant agreed that he is usually out when the landlord comes over. The tenant stated that the landlord shares his bathroom when she comes to the rental unit. Later, the

tenant explained that he has not seen the landlord use his bathroom but “assumes” that she does when she comes over.

Witness SG testified that she has visited the rental unit on a number of occasions. She said that she used to visit approximately once per month when the landlord was living there. She stated that she does not visit as often now, but her most recent visit was the week before this hearing date. She explained that while the landlord was living at the townhouse, she saw the landlord share the same kitchen and bathroom with the tenant. Witness SG maintained that since the landlord moved out, she has seen the landlord use the same kitchen and bathroom as the tenant. Witness SG noted that she attended a Thanksgiving dinner in October 2015 with both the landlord and tenant present, where the landlord was cooking dinner and sharing the same kitchen with the tenant. After hearing testimony from witness SG, the tenant agreed that he shared a Thanksgiving dinner with the landlord and that she used the kitchen, but said it was probably in October 2014 when the landlord lived there, not 2015.

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...*

Overall, I prefer the testimony of the landlord and witness SG, as I found them to be more forthright and credible than the tenant, who frequently changed his testimony based on my questions and the evidence he heard from witness SG.

It is undisputed that the landlord owns this living accommodation. I find that this is shared accommodation that was communicated to the tenant before he moved in. I find that the landlord shares the same kitchen and bathroom with the tenant. Both parties agreed that the landlord previously lived with the tenant and shared a kitchen and bathroom. I accept both the landlord's and witness SG's testimony that the landlord continues to share the same kitchen and bathroom as the tenant on a weekly and monthly basis, since the landlord moved out. While the tenant may not always see the landlord when she is at the townhouse, the landlord is still sharing the same facilities. Further, the tenant agreed that the landlord used his kitchen and he shared a Thanksgiving dinner with her and I accept witness SG's evidence that this occurred in October 2015 after the landlord moved out. Regardless of whether the landlord still

lives there or not, I find that the landlord still shares the kitchen and bathroom with the tenant.

The *Act* specifically excludes tenancies whereby the owner of a rental unit shares a kitchen and bathroom with the tenant. Accordingly, I find that I am without jurisdiction to consider both parties' applications as the *Act* does not apply to this tenancy because it is excluded by section 4(c) of the *Act*.

I advised both parties about the above information during the hearing. I notified both parties that they could pursue their claims at the Provincial Court of British Columbia or the Supreme Court of British Columbia, if they wished to do so.

I advised both parties that because of their rights to review my decision under section 79 of the *Act*, I could not cancel the landlord's application or the future hearing on September 28, 2016. I notified both parties that if either party was successful in obtaining a review hearing and my decision was overturned, both parties would be required to attend the upcoming hearing. I advised both parties to attend the upcoming hearing out of an abundance of caution and to advise the Arbitrator about my decision at this hearing.

Conclusion

I decline to hear the tenant's application as I have no jurisdiction under section 4(c) 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: August 11, 2016

Residential Tenancy Branch