



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes

MNSD, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order that the Residential Tenancy Branch has jurisdiction
- b. An order that the letter dated June 6, 2016 is not enforceable
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on June 29, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the Residential Tenancy Branch has jurisdiction?
- b. Whether the letter from the landlord to the tenant dated June 6, 2016 which states it is evicting the tenant is not enforceable
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into an oral agreement that provided that the applicant could live in one of the rental units on the lower floor and share kitchen and bathroom facilities with other Tenants on April 1, 2016. The rent is \$550 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$275 on March 15, 2016. The tenancy ended on June 30, 2016.

Analysis:

The first issue to be determined is whether the Residential Tenancy Act excludes this living situation and whether the Act applies. Section 4(c) of the Residential Tenancy Act provides as follows:

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,

After hearing the disputed evidence I determined the Act applies. In my view it was incumbent on the respondents to make it clear to the Applicant that this was not a residential tenancy situation. The landlord failed to make it clear to the applicant that the landlord was using the downstairs kitchen. The use of the downstairs kitchen by the landlord where there is a kitchen upstairs is unusual. This landlord could have solved this problem by clearly advising the applicant the landlord intends to use the downstairs kitchen and putting a term in the written licence to use agreement that the landlord will be using the kitchen and that the Residential Tenancy Act does not apply.

Settlement:

At the end of the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) as follows:

- a. The parties mutually agree to end the tenancy on September 30, 2016.
- b. The Tenant shall be entitled to live in the rental unit for September rent free.
- c. In addition, the landlords shall pay to the Tenant the sum of \$300 to cover moving expenses upon the tenant vacating the rental unit.
- d. The security deposit shall be dealt with in accordance with the provisions of the Residential Tenancy Act.

Conclusion:

As a result of the settlement I granted an Order for Possession effective September 30, 2016. In addition I ordered that the landlord pay to the Tenant the sum of \$300 upon the Tenant vacating the rental unit. All other claims are dismissed.

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 10, 2016

Residential Tenancy Branch

This decision is amended pursuant to section 78(1) of the Residential Tenancy Act this 14th day of September 2016.

Residential Tenancy Branch