



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNL OPT RR MNSD FF

Introduction

This hearing was convened as a result of the Applicant's Application for Dispute Resolution, received at the Residential Tenancy Branch on August 5, 2016, and amended on August 29, 2016 (the "Application").

The Applicant sought the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a notice to end tenancy for cause;
- an order cancelling a notice to end tenancy for landlord's use of property;
- an order of possession;
- an order allowing the Applicant to reduce rent for repairs, services or facilities agreed upon but not provided;
- a monetary order; and
- an order granting recovery of the filing fee.

The Applicant attended the hearing on her own behalf. The Respondent attended the hearing, assisted by her legal counsel, E.R. All parties giving evidence provided a solemn affirmation.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters – Jurisdiction

The Applicant testified that she moved into a room on the upper floor of the Respondent's residence in or about May 1, 2016. The Applicant stated she initially paid the Respondent \$20.00 per day to offset additional laundry, utility, and other expenses. Kitchen and bathroom facilities were shared.

Subsequently, an occupant of the Respondent's "granny suite" on the lower floor of the residence moved out and the Applicant moved downstairs at the beginning of July 2016. Photographs submitted by the Applicant confirm that the downstairs kitchen contained limited amenities including a toaster oven, a bar fridge, and a microwave. There was a separate bathroom in the suite. According to the Applicant, the Respondent agreed the Applicant could rent the suite for \$650.00 per month. In support, the Applicant submitted a copy of a cheque for \$650.00, dated September 1, 2016, alleging previous payments to the Respondent were made in cash.

The Respondent's evidence confirmed the Applicant moved into the upstairs of her home on May 1, 2016, and that the Applicant initially paid \$20.00 per day to cover expenses. However, the Respondent submitted that she allowed the Applicant to live in her home temporarily to help her through a difficult situation. According to the Respondent, the arrangement was not meant to be long-term – she was merely helping a friend.

In addition, the Respondent's written submissions state: "I stated to her this was only temporary. Day to day, week to week, two months max. She agreed. Very informal." Further, the Respondent's evidence was that there was never an agreement with respect to rent, and that the Applicant did not pay a security deposit or pet damage deposit.

The Respondent's evidence is that the Applicant moved into the downstairs suite in July 2016. However, the door delineating the upstairs and downstairs areas remained unlocked, allowing both parties passed freely between the upper and lower areas.

The Respondent also provided evidence that the relationship between the parties deteriorated throughout July 2016. This followed a request by the Applicant for a new fridge, which was refused. According to the Respondent, the relationship became acrimonious. The Respondent felt she could no longer enjoy her home and that the arrangement should end. She asked the Applicant to move out of her home on or about July 27, 2016. At that time, the Respondent says she locked the doors between the

rental units. According to the Respondent, it was at that time that the Applicant asserted there was a tenancy agreement between the parties.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 4(c) of the *Act* states:

“This *Act* does not apply to...living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.”

In this case, I find that the Applicant has provided insufficient evidence for me to conclude, on a balance of probabilities, that a tenancy agreement existed between the parties. Rather, the parties were roommates. The undisputed evidence is that the Applicant lived with the Respondent in a room on the upper floor of the Respondent's residence. They shared bathroom and kitchen facilities. Even when the Applicant moved into the suite in July 2016, the door separating the Respondent's home and the suite remained unlocked, at least until the Respondent became uncomfortable with the acrimonious nature of the relationship.

Accordingly, pursuant to section 4(c) of the *Act*, I decline jurisdiction to hear this matter. The Application is dismissed.

Conclusion

The Application is dismissed for lack of jurisdiction.

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: September 29, 2016

Residential Tenancy Branch