



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 in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss.

The Tenant stated that on June 24, 2016 the Application for Dispute Resolution, the Notice of Hearing, and one document the Tenant submitted with the Application were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant submitted Canada Post documentation that corroborates this testimony. The Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On November 25, 2016 the Tenant submitted a memory stick to the Residential Tenancy Branch. The Tenant stated that on November 25, 2016, this evidence was sent to the Landlord, via registered mail. The Tenant submitted Canada Post documentation that corroborates this testimony. The Landlord stated that she received this evidence on December 06, 2016. As this evidence was mailed to the Landlord within the timelines established by the Residential Tenancy Branch Rules of Procedure, it was accepted as evidence for these proceedings.

The Landlord stated that on December 12, 2016 she submitted evidence to the Residential Tenancy Branch. She stated that she mailed this evidence to the Tenant on December 12, 2016 to the service address provided by the Tenant and that the mail has been returned to her by Canada Post with a note that the service address was unknown.

The Landlord was advised that I did not have a copy of her evidence. She was advised that her evidence package was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure and that it would not be accepted as evidence unless she could convince me, during the hearing, that the evidence was essential. The Rules of Procedure stipulate that a respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7

days before the hearing. As the evidence was only mailed 7 days before the hearing and mail is deemed received on the fifth day after it is mailed, pursuant to section 90 of the *Act*, the Landlord has not complied.

At the conclusion of the hearing the Landlord stated that she did not wish to have an adjournment for the purposes of re-serving her evidence package to the Tenant and re-submitting it to the Residential Tenancy Branch. The Landlord's evidence was not, therefore, considered as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for deficiencies with the rental unit?

Background and Evidence:

The Landlord and the Tenant agree that:

- the tenancy began in February of 2016;
- the Tenant and a co-tenant agreed to pay rent of \$600.00 by the first day of each month;
- the rental unit is an outbuilding located on property owned by the Landlord;
- the Landlord resides on the same residential property;
- there were some cooking facilities in the rental unit;
- an outhouse was provided with the rental unit;
- when the tenancy began the understanding was that the Tenant could use the shower in the Landlord's home; and
- the Tenant did use the shower in the Landlord's home on occasion.

The Tenant stated that approximately one or two months after the tenancy began the Landlord told the tenants they could not use the shower in her home. The Landlord stated that the tenants were not prevented from using the shower during the tenancy, although there was an agreement that they would use the shower when she was not home.

A significant amount of testimony was provided at the hearing which relates to alleged deficiencies with the rental unit. That testimony is not recorded in this decision because it is not relevant to the question of jurisdiction.

Analysis:

Section 4(c) of the *Residential Tenancy Act (Act)* stipulates that this *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

On the basis of the undisputed evidence I find that one of the terms of this tenancy agreement was that the Tenant could share the shower facilities with the Landlord, who owns the rental unit. I therefore find that the Act does not apply to this living arrangement and that I do not have jurisdiction to resolve disputes between these parties. I therefore dismiss the Application for Dispute Resolution.

Conclusion:

The *Act* does not apply to this living arrangement and I dismiss the Application for Dispute Resolution, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 21, 2016

Residential Tenancy Branch