



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP, O

Introduction

This hearing dealt with an Application for Dispute Resolution with the applicants seeking a monetary order and an order to return the applicants' possessions.

The hearing was conducted via teleconference and was attended by both applicants; their two advocates; and the respondent.

At the outset of the hearing I advised the parties I had concerns about jurisdiction. To that end I had the parties describe to me their understanding of the circumstances at the start of the living arrangement.

Section 4 of the *Residential Tenancy Act (Act)* states that the *Act* does not apply to:

- a) Living accommodation rented by a not for profit housing cooperative to a member of the cooperative;
- b) Living accommodation owned or operated by an educational institution and provided by that institution to its students or employees;
- c) Living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation;
- d) Living accommodation occupied included with premises that
 - i. Are primarily occupied for business purposes, and
 - ii. Are rented under a single agreement;
- e) Living accommodation occupied as vacation or travel accommodation;
- f) Living accommodation provided for emergency shelter or transitional housing;
- g) Living accommodation
 - i. In a community care facility under the *Community Care and Assisted Living Act*,
 - ii. In a continuing care facility under the *Continuing Care Act*,
 - iii. In a public or private hospital under the *Hospital Act*,
 - iv. If designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
 - v. In a housing based health facility that provides hospitality support services and personal health care, or

- vi. That is made available in the course of providing rehabilitative or therapeutic treatment or services;
- h) Living accommodation in a correctional institution;
- i) Living accommodation rented under a tenancy agreement that has a term longer than 20 years;
- j) Tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies; or
- k) Prescribed tenancy agreements, rental units or residential property.

The applicants submitted that despite planning, prior to arriving in the community, to rent a basement rental unit from the respondent the unit was not ready when they did arrive. The applicants confirmed that at the time they signed the "Residential Lease Agreement" they were aware the unit was not a distinct unit and that it did not have a kitchen. I note the female applicant is the respondent's daughter.

The applicants also confirmed they knew that they would be sharing the kitchen with the upstairs occupants. They stated the upstairs occupant was the respondent's other daughter. The respondent submitted that both she and her youngest daughter lived in the property at the time.

The respondent submitted the property had a master bedroom upstairs and two bedrooms down. She stated that earlier in the year of 2015 she had significant damage to the lower floor and had gutted it. She stated that she had advised the applicants when they had been discussing the applicants' intentions to move to the community.

The respondent testified that her other daughter used the master bedroom and that she had sectioned off an area of the upper floor living area to use as her bedroom. When the applicants moved into the property their daughters moved into this area and the respondent slept on the couch.

The applicants submitted that during the time they lived in the property the respondent stayed with her boyfriend and did not live in the property. The respondent confirmed that she did stay with her boyfriend for increasing periods of time when the relationship between the parties worsened.

The respondent confirmed she had built the house 23 years ago and that during the relevant time period her mailing address was the same as the dispute address. I also note the document submitted by the applicants entitled "Residential Lease Agreement" specifies that the respondent's address for notification or service is the same as the dispute address.

Based on the above, I find at the time the parties entered into the agreement the applicants were aware that they would be required to share a kitchen with the other occupants of the property.

I find, on a balance of probabilities and in consideration of the “Residential Lease Agreement” submitted at the time the parties entered into the agreement the respondent did reside at the property. I am not, however, persuaded by the applicants’ submissions that the respondent was not living in the property. Even if the respondent was spending an increasing amount of time staying elsewhere during this period there is no evidence before me that the respondent had changed her residential address.

Furthermore, there is no requirement for the owner of the property to be living in the property but rather the requirement is that the living accommodation is such that the owner and the occupant share the kitchen. I find this is satisfied, at least in part, because the respondent’s other daughter lived on the upper floor.

Therefore, I find the respondent is the owner of the property and was for all material times sharing kitchen facilities with the applicants and that the physical layout of the property included only one kitchen. As a result, I find that the living accommodation is one in which the occupant shares bathroom or kitchen facilities with the owner of that accommodation. Pursuant to Section 4 (c), I find the *Act* does not apply to this living accommodation.

Issue(s) to be Decided

The issues to be decided are whether the applicants are entitled to a monetary order for compensation or money owed; for an order to compel the respondent to return personal property, pursuant to Sections 26 and 28 of the *Residential Tenancy Act (Act)*.

Conclusion

Based on the above, I decline to hear the matters in this Application for Dispute Resolution for want 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: January 24, 2017

Residential Tenancy Branch