



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O

Introduction

This hearing dealt with an Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the applicant and the respondent.

The applicant submitted she moved into the residential property a couple of days before the end of March 2016 for a monthly rent of \$400.00 due on the 1st of each month and that she paid a security deposit of \$200.00. The respondent agreed with the applicant's explanation of the terms with the exception of the date the applicant moved in – he was not sure of the exact date.

The respondent raised this issue of whether or not the *Residential Tenancy Act (Act)* should apply to the relationship between the two parties. The respondent submitted that the residential property was owned by him and he lived in the property during the entire time the tenant lived in the property. The respondent further submitted that during that time he shared kitchen and bathroom facilities with the applicant.

The respondent submitted that he had rented out rooms to other people as roommates who shared a kitchen and bathrooms with him and that Section 4 of the *Act* exempts this roommate situation from the jurisdiction of the *Act*.

The applicant submitted that she rented a separate suite from the respondent. She stated that the respondent purchased an induction hotplate to allow her to cook in a separate area from the other occupants of the property. She stated she did not share a bathroom with the respondent.

The applicant also testified that in June 2016 and until the day she was locked out of the property (August 22, 2016) she did not see the respondent on the property. She understood that he had moved out of town.

The respondent testified that he had not moved out town during any of the time the applicant lived in the property. He stated that there was no separate rental unit but that the property consisted of a house that had been set up as a rooming house and so he continued to rent out rooms after he purchased the property and while he lived there. The respondent testified that he has now converted the property to a single family unit and has rented to tenants.

In support of her position the applicant has submitted a typewritten note from a former resident of the property; two handwritten notes from two other former residents of the property; and an email from an occupant of the property who moved into the property after the applicant's departure.

Each document from previous occupants concurred with the applicant's description of the living arrangements; however none of the statements were notarized or authenticated.

The respondent, likewise, submitted several letters including:

- A letter from a local municipal government official dated January 10, 2017 stating that on a date after the applicant departed the property there was not a secondary suite on the property;
- A letter dated February 9, 2017 from his insurance broker regarding a change in the type of insurance the respondent had on the property. Originally, on October 9, 2015 the respondent purchased rooming/boarding house insurance and changed that to a residential rented dwelling policy effective September 1, 2016;
- A typewritten statement from a neighbour stating the respondent told her in September 2016 that he would be moving out of province for work and that in August she had another conversation with him when he told her that he had to evict some roommates because they didn't pay rent;
- A typewritten statement from his mother and one from his father

Section 4 of the *Act* states that the *Act* does not apply to, among other things, living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In this case, the burden rests with the applicant to provide sufficient evidence that she has suffered a loss under the *Act*. The first part of that burden is to establish that a tenancy existed under the jurisdiction of the *Act*.

While the applicant has provided written documents attributed to people but without authentication or having the people present testimony and be cross examined by the respondent I find the written statements submitted bear little weight, in response to the respondent's assertions of the roommate situation, to support her claim.

In addition, while the respondent has also submitted substantial documentary evidence that are not authenticated or notarized documents I accept that one is on a local

municipal government letterhead and the other an insurance broker's letterhead. Both of these documents provide confirmation of the respondent's assertions of the house use during all material time periods.

Based on the above and a balance of probabilities, I find that the applicant has failed to provide sufficient evidence to establish that a tenancy existed where she did not share a kitchen or bathroom with the owner of the property.

Issue(s) to be Decided

The issues to be decided are whether the applicant is to a monetary order for the return of a portion of rent; for compensation for a wrongful eviction; and for all or part of the security, pursuant to Sections 38, 44, 67, and 72 of the *Act*.

Conclusion

Based on the above, I dismiss 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: February 28, 2017

Residential Tenancy Branch