



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 35 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The tenant said that she did not receive the landlord's written evidence package. The landlord first said that she sent it by regular mail to the tenant on September 29, 2016. She then said that she sent it by registered mail on October 20, 2016. She provided a Canada post tracking number verbally during the hearing. Yet, she stated that she could not be sure that was the correct tracking number. When I confirmed the tracking number on the Canada Post website during the hearing, it indicated that the package was sent out on September 1, 2016 and delivered to and signed for by the landlord on September 7, 2016. The landlord then claimed that the tracking number was probably for a package that was sent to her by someone. As the landlord could not provide a correct date or tracking number for service of her written evidence to the tenant, I advised both parties that I could not consider the landlord's written evidence at this hearing because I found that it was not served to the tenant, as required by Rule 3.1 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*.

Preliminary Issue – Jurisdiction to hear Matter

At the outset of the hearing, the landlord raised an argument under section 4 of the *Act*, stating that the RTB has no jurisdiction to hear this matter because the landlord shares a kitchen and bathroom with the tenant. The tenant disputes the landlord's contention.

The rental unit is two rooms in a three-bedroom, two-bathroom townhouse. The rental unit is on the main floor of the townhouse, while an independent basement suite is contained below, separate from the main townhouse level. The tenant, her boyfriend and their daughter lived in the two rooms at the townhouse and have since moved out. The landlord said that the tenant and her family lived at the rental unit from November 1, 2015 to January 1, 2016. The tenant claimed that she moved in on November 20, 2015 but paid full rent for November 2015 to the landlord, and she vacated on December 31, 2015.

There is no dispute that the landlord owns the townhouse. The landlord claimed that she previously lived in one of the rooms of the townhouse, moved out and then moved back in around October 1, 2016, when another tenant moved out. The other tenant that moved out of the room was the tenant's father, who appeared at the RTB, together with the same landlord, for two previous hearings before me in August and September 2016. The file numbers for these previous hearings appear on the front page of this decision. I issued decisions following both hearings, declining jurisdiction over the tenant and landlord's applications, because I found that both of those parties shared a kitchen and bathroom. While the facts of those cases were not entirely similar to this case, some of the same facts apply. The landlord is well aware of these cases as she appeared at both hearings, and referenced them in her verbal testimony, while the tenant said that she was aware of the cases but had not read them in detail.

The landlord said that the current zoning bylaw for her townhouse only allows for shared accommodation and boarders. She explained that she advertised the rental unit as shared accommodation and advised the tenant about this before she moved in. She confirmed that she does not have a written tenancy agreement with the tenant and she accepts rent money from her for the rental unit. The tenant did not dispute any of the above facts.

The landlord stated that during this tenancy and before she moved back into the unit, all of her belongings were in the townhouse and she used the townhouse as her primary mailing address. Both parties agreed that the landlord visited the townhouse on a

monthly basis, sometimes twice per month, to collect rent from the tenant and used the same bathroom as the tenant, while she was there. The landlord said that she used a desk in the corner of the kitchen area, as her office space, when she visited. She said that she ate in the kitchen and used the utensils, although she did not cook for the tenant and her family. Both parties agreed that the landlord brought gift baskets and food for the tenant and her family, during the Christmas season in December 2015.

The tenant disputes that she shared a kitchen with the landlord. She said that the landlord did not cook or use the kitchen when she visited. The tenant agreed that the landlord used the bathroom while visiting, but said it was not often enough to be considered as “sharing” under the *Act*, as it was not once or twice per week.

Analysis

Section 4(c) of the *Act*, outlines a tenancy in which the *Act* does not apply:

*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...*

It is undisputed that the landlord owns this living accommodation. I find that this is shared accommodation that was communicated to the tenant before she moved in. I find that the landlord shared the same bathroom with the tenant. Both parties agreed that she did. Although the landlord did not live there with the tenant during her tenancy, since she moved back in after the tenant vacated, she still shared the bathroom with the tenant on a monthly or bi-monthly basis. I find that this fulfills the requirement of “sharing” under section 4(c) of the *Act*.

The *Act* specifically excludes tenancies whereby the owner of a rental unit shares a bathroom with the tenant. Accordingly, I find that I am without jurisdiction to consider the tenant’s application as the *Act* does not apply to this tenancy because it is excluded by section 4(c) of the *Act*.

I advised both parties about the above information during the hearing. I notified the tenant that she could pursue her claim at the Provincial Court of British Columbia or the Supreme Court of British Columbia, if she wished to do so.

Conclusion

I decline to hear the tenant’s application as I have no jurisdiction under section 4(c) of the *Act*.

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: March 02, 2017

Residential Tenancy Branch