



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the applicant for an order of possession, a monetary order for unpaid rent.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

Preliminary issue

The first issue I must determine is whether the Act has jurisdiction to hear this matter.

What this Act does not apply to

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,.

In this case, the respondents lived on the upper portion of the residence; the applicant who is the owner of the property lived in the basement portion. The parties shared a kitchen and bathroom.

The applicant owner of the premises was arrested and prohibited from attending the premises. Although the applicant has not been on the property for an extended period of time, that is due to a court order. The Court can change that order should circumstances of the offender change.

However, circumstance such as above, do not change the facts that they are the owner of the property, and shared a kitchen and bathroom with respondents while living there. A party cannot unilaterally create their own tenancy.

The evidence of the both parties supports that the Residential Tenancy Act does not apply in this case, as the respondents were sharing both the kitchen and bathroom facility with the owner of the accommodation. Therefore, I find that there is no jurisdiction to proceed with this application and I dismiss the application without leave to reapply.

Conclusion

I order that the application is dismissed without leave to reapply due to the lack of jurisdiction under 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 31, 2017

Residential Tenancy Branch