



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding POSABILITIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O

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

- "Other" unspecified remedy under the Act, regulation or tenancy agreement.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issue(s) to be Decided

Does this matter fall within the jurisdiction of the Residential Tenancy Act (the Act)?

Background and Evidence

The tenant gave the following testimony. The tenant testified that she move into the building on August 1, 2016. The tenant testified that the landlord did not advise her at the time of renting the unit that the landlord would be installing cell phone antennae's on the building rooftop; the tenant testified that had she known this she wouldn't have moved in. The tenant testified that she is moving out on March 31, 2017 and that the landlord should pay for her moving costs. The tenant testified that she feels that although she doesn't have access to the rooftop, she feels it is no different than sewers or water and that it is part of her tenancy which would have it fall under the jurisdiction of the Act.

Counsel for the landlord gave the following submissions. Counsel submits that the rooftop is not part of the tenancy agreement as it is not a common area and that it is a secured area that tenants' cannot access. Counsel submits that this is not an essential service in any way that would affect the tenant or the tenancy. Counsel submits that the

rooftop has no impact whatsoever on the tenant. Counsel submits that the landlord went above and beyond any requirements by completing a consultation process and applying for and being granted a re-zoning permit through the local municipality. Counsel submits that the appropriate governing body has already considered the issue in favour for the landlord and that decision should remain.

Analysis

The landlord provided extensive documentation for this hearing outlining how this matter does not fall under the jurisdiction of the Residential Tenancy Act. . Section 2 of the Act provides that the Act applies to tenancy agreements, rental units and other residential property. Section 1 of the Act defines “residential property” to mean a rental unit and other areas such as common areas. The definition of a “rental unit” means living accommodation that is rented to a tenant. The rooftop is not a common area or part of the tenancy agreement. In the tenant’s own testimony she conceded that she did not have access to the rooftop and also agreed it was not a common area. As I have found the area in question is not a common area as part of the tenancy agreement; it is my determination that this matter does not fall under the jurisdiction of the *Residential Tenancy Act*.

Conclusion

I HEREBY DECLINED TO HEAR this matter, 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: March 31, 2017

Residential Tenancy Branch