



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties M.S. and D.M.: OPR, OPB, MND, MNDC, FF
Parties J.T. and L.A.: CNR

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “*Act*”).

Parties M.S. and D.M. are seeking an order of possession for unpaid rent; an order of possession for breach of an agreement with the landlord; a monetary order for unpaid rent or utilities; a monetary order for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and recovery of the filing fee for their application from the other parties.

Parties J.T. and L.A. are seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”).

Parties M.S. and D.M. (the “property owners”) appeared at the hearing and gave affirmed testimony. The property owners appeared with a witness. Party L.A. appeared at the hearing and gave affirmed testimony. Party L.A. also appeared as agent for Party J.T. During the hearing the all the parties were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the issue of jurisdiction.

Evidence and Analysis

Section 4 of the *Act* states that this *Act* does not apply to living accommodation in which bathroom or kitchen facilities are shared with the owner of that accommodation.

The property is a three level home with two kitchens and several bathrooms. The property owners testified that they rent rooms in their home to mostly students. The property owners testified that they share the kitchen facilities and bathroom facilities with the renters in their home. The property owners testified that they store extra food in a freezer in the second kitchen and use the second kitchen from time to time as they need. The property owners testified that

they share all the bathrooms in the house with the other renters and that they use whatever bathroom is vacant.

Party L.A. testified that she and Party J.T. are renters in the property owners' home. However, Party L.A. testified that the property owners do not share the kitchen or bathroom facilities with the renters. Party L.A. testified that the second kitchen and a bathroom are for the exclusive use of all the renters. Party L.A., also testified, however, that the property owners were using the second kitchen freezer to store items. The statement submitted by Party L.A. also indicates that the male property owner uses the second kitchen to grind his coffee.

Based upon the above, the testimony and evidence of the parties, and on a balance of probabilities, I find that there is sufficient evidence to satisfy me that the property owners share kitchen facilities with Parties J.T. and L.A. In making this finding, I have taken into consideration the fact that the undisputed evidence established that the property owners have free access to store items in the freezer located in the second kitchen that Parties J.T. and L.A. use. I have also taken into consideration the fact that the typed statement of Party L.A. described the male property owner using the second kitchen as a place to grind coffee. I find these aspects of Parties J.T. and L.A.'s evidence consistent with the property owners' testimony that the facilities are shared.

Based upon the foregoing, and in accordance with section 4 of the *Act*, I decline jurisdiction in this matter as the *Act* does not apply to this type of living accommodation.

Conclusion

Based upon the reasons set out above, I decline to accept jurisdiction in this matter.

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: May 08, 2017

Residential Tenancy Branch