



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, OPT, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order of possession to the rental unit, pursuant to section 54; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and his agent and the tenant and his agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent confirmed that he was the co-shareholder of the landlord company that owns the rental unit named in this application. The tenant's agent confirmed that she had authority to speak on behalf of the tenant named in this application, who is her husband, because he was unable to properly communicate in English for the hearing. "Witness JG" testified on behalf of the landlord.

The hearing lasted approximately 31 minutes in order to allow both parties to fully present their submissions. At the conclusion of the hearing, the landlord, his agent and witness JG exited the conference first so that the tenant's agent could provide me with her email address confidentially without the landlord being present, as per her request. I did not discuss any evidence with the tenant's agent after the above participants exited the conference.

The landlord's agent 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 landlord's agent confirmed that the tenant was served with the landlord's evidence package on July 25, 2017, by way of registered mail to the address provided by the tenant in his application for dispute resolution. The landlord provided a Canada Post receipt, tracking number and a photograph of the envelope with the tracking information, with his evidence package. The tenant denied receipt of the written evidence. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's evidence on July 30, 2017, five days after its registered mailing and more than seven days prior to the hearing as required by Rule 3.15 of the Residential Tenancy Branch *Rules of Procedure*.

Preliminary Issue – Jurisdiction to hear Matter

The landlord's agent confirmed that the tenant rented a room in a house. He stated that a company owns the house. He said that he and the landlord named in this application are the only two shareholders of the company that owns the house. The landlord provided a diagram showing that the landlord's agent's room, which he lives in, was right beside the tenant's room in the same house. The landlord's agent said that he shares the kitchen and bathroom with the tenant in the same house.

The landlord confirmed the testimony of the landlord's agent. Witness JG confirmed that he attended at the house one time in March 2017 in order to serve documents to the tenant and he saw that the landlord's agent's room was right beside the tenant's room and that both shared the same kitchen and bathroom.

The tenant's agent disputed the testimony of the landlord, his agent and witness JG. She claimed that she lived at the property and the landlord's agent did not live there, only his son did. She said that she has not seen the landlord's agent living at the house.

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's agent is a shareholder of the company that owns this living accommodation. I find that the landlord proved, on a balance of probabilities, that the landlord's agent shared the same kitchen and bathroom with the tenant. For all intents and purposes of the *Act*, I find that the landlord's agent and the company are the same because the landlord's agent is one of the two shareholders of the company.

The landlord and witness JG corroborated the landlord's agent's testimony, in addition to the diagram provided by the landlord in his evidence package. The tenant did not provide any written evidence or witness testimony to support his claim that the landlord does not share the kitchen and bathroom with the tenant.

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

I informed both parties about my decision during the hearing and notified them that they could pursue this application in the Provincial of British Columbia or the Supreme Court of British Columbia.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this Application.

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: August 08, 2017

Residential Tenancy Branch