



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, MNDC, O, LRE, FF

Introduction

On July 17, 2017 the Applicant filed an Application for Dispute Resolution, in which she applied for an Order suspending or setting conditions on the Respondents' right to enter the rental unit and for "other".

The Applicant stated that on July 17, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Respondents, via registered mail. Legal Counsel for the Respondents acknowledged receipt of these documents.

On August 23, 2017 the Applicant filed an Amendment to an Application for Dispute Resolution in which she applied to cancel a Notice to End Tenancy for Landlord's Use of Property and for a monetary Order. The Applicant stated that on August 23, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Respondents, via registered mail. Legal Counsel for the Respondents acknowledged receipt of these documents.

On August 23, 2017 the Applicant submitted 7 pages of evidence to the Residential Tenancy Branch. The Applicant stated that this evidence was served to the Respondents, via registered mail, on August 23, 2017. Legal Counsel for the Respondents acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On September 14, 2017 the Applicant submitted 8 pages of evidence to the Residential Tenancy Branch. The Applicant stated that this evidence was delivered to the Respondents' mail box, on September 11, 2017. Legal Counsel for the Respondents acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On September 19, 2017 the Respondents submitted 27 pages of evidence to the Residential Tenancy Branch. Legal Counsel for the Respondents stated that this evidence was personally served to the Applicant, although he does not know the date of service. The Applicant stated that she received these documents on September 11, 2017 and they were accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Do I have jurisdiction over this living arrangement and, if so:

- should the Two Month Notice to End be set aside;
- is there a need to issue an Order suspending or setting conditions on the Respondents' right to enter the rental unit;
- is the Applicant entitled to a monetary Order?

Background and Evidence

The Applicant and Respondent agree that:

- the Applicant moved into a room in this residential complex on May 01, 2017;
- other occupants live in the residential complex in separate rooms;
- the Applicant and the other occupants share common areas, including a kitchen and bathroom;
- the Applicant agreed to pay monthly rent of \$850.00; and
- the Respondents own the residential complex.

The Respondents contend that the female Respondent used the lower portion of the residential complex for work purposes and that she occasionally stayed overnight in a room in the lower part of the complex. Legal Counsel for the Respondents stated that during the summer the female Respondent sleeps at the residential complex 1-5 times per month and during the winter she sleeps there 10-15 times per month. He stated that the female Respondent works at the complex more often than she sleeps at the complex.

The Applicant stated that the female Respondent has a small room in the lower portion of the residential complex, which contains a single bed. She stated that the female Respondent periodically works in the lower portion of the complex during the day but she has only stayed overnight on one occasion. She stated that initially the female Respondent was working in the complex a “couple of times” per week during the first part of this tenancy and she is currently working there 3-4 times per week.

Legal Counsel for the Respondent stated that when the female Respondent is at the residential complex she and her friends use both bathrooms in the complex; she uses the kitchen; and she uses common areas to visit with friends and other occupants of the complex. He stated that she has a small fridge in the lower portion of the complex.

The Applicant stated that the female Respondent uses the bathroom in the lower portion of the complex. She stated that the female Respondent has never used the upper bathroom, although the Respondent’s friends have used the upper bathroom. She stated that the Respondent periodically uses the kitchen to prepare snacks and tea, in spite of the fact she has a small fridge and kettle in the lower portion of the complex.

The Respondent submitted internet advertisements for the rental unit. Legal Counsel for the Respondents contends that these advertisements clearly imply that the space will be shared with the Respondents. The Applicant stated that she interpreted the advertisements to mean that the space would be shared with other renters.

The Respondents submitted a letter from a renter who moved into the complex shortly after the Applicant, in which he declared that prior to moving into the rental unit he understood that the Respondents would maintain a work and living space in the lower portion of the complex, and that they would share the kitchen, bathrooms, and common spaces.

The Applicant contends that the Respondents were clearer with the renter who wrote the aforementioned letter. She stated that she was told the female Respondent would be working in the complex on Tuesdays and Thursdays and that she would be using the upstairs bathroom, but she was never told she would be staying overnight.

Legal Counsel for the Respondent stated that prior to moving into the complex the Applicant was clearly informed that the Respondents would be maintaining a fifth bedroom in the complex.

The Respondents submitted an email, dated March 14, 2017, which the Respondents sent to the Applicant prior to agreeing that she could move into the complex. Legal Counsel for the Respondents contends that this implies that the space will be shared with the Respondents.

The parties agree that they signed a document titled a Roomer/Landlord Agreement, which was served to the Respondents as evidence. The parties were advised that I did not receive the document in the evidence package provided to the Residential Tenancy Branch; however the parties were able to discuss the document at the hearing.

The parties agree that the document declares that the form applies if the roomer is living with the homeowner and is sharing a kitchen and bathroom with the homeowner, the “tenancy protection act” does not apply. The Applicant stated that she received this document on April 11, 2017, which is after she paid her security deposit. She stated that by this time she understood that Respondents had a bedroom in the lower portion of the unit.

The Applicant believes she falls under the *Residential Tenancy Act (Act)* because the Respondents did not live in the unit.

Analysis

Before considering the merits of any Application for Dispute Resolution I must determine whether the Application has jurisdiction under the *Act*.

Section 4(c) of the *Act* stipulates that the *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of the accommodation. (Emphasis added)

I find that the female Respondent shares the kitchen facilities with the Applicant when the Respondent is working in the residential complex. In reaching this conclusion I was heavily influenced by the Respondents’ submission that the female Respondent uses the kitchen facilities, as well as the Applicant’s acknowledgement that the Respondent uses the kitchen to make snacks and tea.

As the *Act* does not require that the owner of a rental unit share the kitchen and the bathroom with a tenant, I find it is not necessary to determine whether the Applicant and the Respondents also share the bathrooms in the complex.

On the basis of the undisputed evidence I find that the female Respondent regularly works in the residential complex, on a part-time basis. I specifically note that section 4(c) of the *Act* does not stipulate that the owner must sleep in the rental unit or live in the rental unit on a full-time basis. I therefore find it is not necessary to determine whether the Respondents ever sleep in the residential complex.

As the female Respondent periodically works in the residential complex and she shares the kitchen facilities with the Applicant, I find that I do not have jurisdiction over this living arrangement, pursuant to section 4(c) of the *Act*.

I do not have jurisdiction over this matter and I therefore do not have authority to determine any issues relating to the living arrangement, including whether or not the Applicant fully understood the terms of this living arrangement.

Conclusion:

The Application for Dispute Resolution is dismissed, as I do not have 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: September 29, 2017

Residential Tenancy Branch