



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC RR

Introduction

This hearing was scheduled to address the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for compensation for damage or loss under the *Act* pursuant to section 67; an order requiring the landlord to comply with the *Act* pursuant to section 62; an order to allow the tenant(s) to reduce rent for repairs agreed upon but not provided pursuant to section 65.

The applicant did not attend this hearing, although I waited until 11:11 am in order to enable the applicant to connect with this teleconference hearing scheduled for 11:00 am. The respondent attended the hearing. The respondent testified that he submitted documentary evidence to show, in his submission that there is no tenancy under the *Residential Tenancy Act* but merely a series of successive agreements for a room rental. Under most circumstances, when an application fails to attend a hearing, an application would be dismissed in accordance with Rule 10.1 of the Rules of Procedure that reads,

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

However, despite the absence of the applicant, the landlord has raised the issue of jurisdiction of the Residential Tenancy Branch. Therefore, before making any determination in this matter, I must consider the landlord's submissions prior to making any finding on this application, even if my finding consists of dismissing the application.

Preliminary Issue and Background: Jurisdiction to consider this application

The respondent submitted copies of 3 successive agreements regarding accommodations with the first one beginning on September 1, 2015 requiring the applicant to pay \$775.00 each month. The respondent testified that he is the home owner and he lives in the upstairs in the residential premises while the applicant lives below. He testified, supported by his room rental agreements that he shares a kitchen and living room space with the applicant.

The three documents titled “room rental agreement” are signed by both parties and require the applicant to maintain two bedrooms, a washroom and a shared kitchen and living room area. The agreement also places restrictions on: smoking; pets; and number of adults in bedroom(s).

Analysis

Section 4(c) of the *Act* reads in part as follows:

- 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...*

The undisputed testimony and the documentary evidence of the respondent (and owner) at this hearing is that he rented a room where he shares kitchen facilities with the other occupants of the house, including the applicant.

I find that the undisputed evidence shows that rental room has been provided to the applicant as living accommodation that shares kitchen facilities with the owner regularly. The oral testimony of the respondent/owner, the written evidence in the room rental agreement(s), and the rules of residence within that agreement all provide evidence to prove that this applicant rents a shared living accommodation with the owner.

Under these circumstances and based on the evidence before me, I find that the *Act* does not apply to this agreement. I therefore have no jurisdiction to render a decision in this matter.

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: October 10, 2017

Residential Tenancy Branch