



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This hearing dealt with the applicant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a remedy under the *Act*.

The applicant, the respondent and the respondent's assistant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Both the applicant and the respondent had interpreters who indicated that they would be interpreting on behalf of their respective parties.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The applicant testified that the notice of this hearing and evidence was served to respondent by way of registered mail on November 06, 2017. The respondent confirmed receipt of the notice and applicant's evidence.

The respondent testified that they served their evidence to the applicant by way of registered mail on December 27, 2017. The applicant confirmed receipt of the respondent's evidence.

At the outset of the hearing the applicant established that he was seeking a monetary remedy in the amount of \$3,009.00 for compensation for damage or loss under the *Act*, regulation or tenancy agreement. The applicant confirmed that he provided a copy of a Monetary Order Worksheet to the respondent outlining their monetary claim.

Issue(s) to be Decided

Is the applicant entitled to a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

A copy of a residential tenancy agreement was provided in evidence for a tenancy to commence on September 01, 2017, with a monthly rent of \$1,100.00, due on the first day of each month. An addendum to the tenancy agreement signed by both parties was included with the agreement, which was translated to English by a professional translator, titled as a "Service Agreement" listing the services to be included as a room with a bed, bathroom, a wet bar, a sofa, a TV etc. and also indicates that the applicant is entitled to usage of public areas of the respondent's home, including the kitchen, dining room, study, living room, patio, backyard and lawn. The respondent confirmed that they currently retain a "Homestay" deposit in the amount of \$550.00

The applicant provided in evidence copies of receipts for expenses incurred as a result of the circumstances between the applicant and the respondent and a picture of the "kitchen" in the room being rented.

The respondent provided in evidence:

- a detailed description of the circumstances between the applicant and the respondent;
- a screenshot of a Homestay advertisement dated May 01, 2017, which is also translated into English by the same translator. The translated advertisement indicates a "Homestay" for a student with services included of driving a student to school, three meals a day, and a super large room, including wardrobe, desk, chair, bed, bathroom, wetbar, sofa TV etc.;
- a copy of a receipt for a "Homestay" deposit in the amount of \$550.00; and
- pictures of the room showing a wet bar with a mini fridge and a sink.

The applicant testified that he entered into a residential tenancy agreement with the respondent on May 05, 2017, for a room that he and his son were going to live in. The applicant stated that he and his son moved into the room on August 29, 2017, a couple days ahead of the official start of the agreement and were going to pay \$70.00 a night until the agreement commenced. The applicant stated that he and his son had a shower in their own bathroom and cooked meals with a microwave in their kitchen attached to their room. The applicant maintained that the kitchen is incomplete but satisfied the daily needs of him and his son.

The applicant recounted that, shortly after eating his supper, the respondent requested a meeting with him and tried to have their agreement modified to a Homestay agreement. After the conversation with the respondent, the police arrived and informed

the applicant that they could only stay one night and could return at the commencement of their agreement on September 01, 2017. The applicant stated that upon returning to the unit at midnight of August 31, 2017, to commence the agreement for the room, the respondent would not allow him and his son into the room and the police were called. The applicant is seeking compensation for the expenses incurred as a result of the respondent not honouring their agreement.

The respondent submitted that they own their home and that the “kitchen” is not a kitchen but is in fact a wet bar and does not have the necessary kitchen applications or supplies like cooking oven, stove and range hood. The respondent contended that the agreement was not a residential tenancy, but a Homestay agreement and only the son was to be living in the room downstairs and would share the kitchen facilities with the respondent. The respondent stated that there is no separate entrance for the room downstairs and that the party who is renting the room downstairs is required to go through the living room and dining room to go down the stairs to the room being rented.

The respondent stated that she co-owns the house with her sister, the respondent's assistant, and live there with their three young children and would have never agreed for a man to live in the room downstairs. The respondent stated that their advertisement was for a student to ‘Homestay’ with them and that the applicant told them that he needed a residential tenancy agreement to be completed in order for him to receive benefits from the government for his son. The respondent maintained that she was misled to sign the tenancy agreement as the applicant intended on living in the room with his son, which was not what the respondent initially agreed to or advertised for. The respondent stated that she has a “Homestay” deposit, not a security deposit for a residential tenancy.

Analysis

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

I accept the respondent's undisputed testimony that they own the house with their sister. I find that the advertisement for the room clearly indicates that kitchen facilities are to be shared. I find that the respondent did not intend to rent the room to the applicant but to provide “Homestay” services to a student, the applicant's son, who was intended to share the kitchen facilities with the respondent. I further find that the wet bar in the room downstairs that was to be rented is not a kitchen, just a wet bar. I find that

there is only one established kitchen in the house, which is be shared by an occupant in the room downstairs with the owner of that accommodation.

Based on the documentary evidence, affirmed testimony of both parties, a balance of probabilities and the above, I find that I do not have jurisdiction to hear this matter.

Conclusion

I decline to proceed due to a lack 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: January 15, 2018

Residential Tenancy Branch