



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, AAT, FF

Introduction

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

- a monetary order for 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 to allow access to or from the rental unit or site for the tenant or the tenant's guests, pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's agent and the tenant 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 confirmed that her agent had authority to speak on her behalf at this hearing. The hearing lasted approximately 37 minutes in order to allow both parties to fully present their submissions.

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 written evidence package by way of registered mail. The tenant denied receipt of the written evidence. As the evidence is not referenced in my decision, I do not find it necessary to make findings regarding service of the landlord's written evidence to the tenant.

Preliminary Issue – Jurisdiction to hear Matter

The landlord confirmed that she is the owner of the rental unit, which is a house. She said that there are three floors with ten to eleven rooms total. She said that she occupies a room on the third floor, the tenant occupied a room on the second floor, and other tenants occupied the first floor. She claimed that this is a hostel which is shared by different students while they are attending school. She stated that she shared the kitchen and bathroom with the tenant during their tenancy, as the tenant has now moved out. She acknowledged that even though there was a separate male bathroom and a separate female bathroom in the rental unit, she used the male bathroom when the female bathroom was unavailable. She said that she cooked and ate meals in the kitchen. The landlord's agent confirmed that he has seen the landlord sharing the kitchen and bathroom with the tenants residing at the rental unit.

The tenant disputed the testimony of the landlord and her agent. He said that the landlord did not live at the rental unit during his tenancy. He stated that she had an office location close to the rental unit, and she would check up on the tenants at the rental unit for about 12 hours each day usually between 9:00 a.m. and 9:00 p.m. He maintained that she only used the female bathroom, not the male bathroom that he used. He claimed that she did not share the kitchen with him, because he did not see her cook there and he did not eat meals with her. He said that he only saw her throw out the trash in the kitchen.

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 owns the rental unit. I find that the landlord proved, on a balance of probabilities, that she shared the same kitchen and bathroom with the tenant. Her testimony was supported by her agent.

The landlord is not required to live at the rental unit in order to share the kitchen and bathroom with the tenant. The tenant acknowledged that the landlord had unlimited access to the rental unit, attended it for approximately 12 hours each day, and used the kitchen when he saw her throwing out the trash. The tenant agreed that he provided

written evidence supporting this application where he documented an argument that he had with the landlord while using the kitchen. The landlord is not required to be cooking at the same time as the tenant or sharing meals with him. I accept the landlord's testimony that she used the kitchen, which was a shared space with the tenant. It is undisputed that there was only one kitchen at the rental unit. I accept the landlord's testimony that she used the same male bathroom as the tenant, when the female bathroom was unavailable. The landlord's agent witnessed the landlord using the rental unit kitchen and bathroom as a shared space with all the other tenants.

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 tenant's application because it is excluded by section 4(c) of the *Act*.

For the above reasons, I find that this is not a matter within the jurisdiction of the Residential Tenancy Branch. Accordingly, I decline jurisdiction over the tenant's application. I informed both parties of my decision verbally during the hearing.

Conclusion

I decline jurisdiction over the tenant's application.

I make no determination on the merits of the tenant's application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent 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 12, 2018

Residential Tenancy Branch