



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

Pursuant to section 9.1 (1) of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the tenant's application for:

- an Order that the landlord comply with the Act, regulations or the tenancy agreement pursuant to section 62 (3) of the Act; and
- recovery of the filing fee from the landlord pursuant to section 72 of the Act.

The landlord and the tenant both attended the hearing by way of teleconference. The landlord and the tenant were given a full opportunity to be heard, to present affirmed testimony, to make submissions and, to call witnesses.

Issue(s) to be Decided

Preliminary Issue – Jurisdiction

Do I have jurisdiction under the *Act* to consider this application for dispute resolution?

The parties agreed that the issue of jurisdiction should be dealt with as a preliminary matter as it was in dispute. The tenant's position is that the *Act* applies to the relationship he had with the person named as "landlord" of the property. The landlord's position is that the *Act* does not apply based on the wording of section 4.

If jurisdiction is established it must then be determined if the tenant is entitled to the requested orders pursuant to the *Act*.

Background and Evidence

There was a substantial amount of documentary evidence filed by each of the parties. While I have turned my mind to all the documentary evidence which was filed within the time prescribed the *Act*, and the testimony of the parties, not all details of their respective submissions and / or arguments are reproduced here. The principal aspects of the evidence on jurisdiction and my findings are set out below.

Neither party provided a copy of any written tenancy agreement in evidence.

The crux of the dispute as between the parties is whether or not the landlord and the tenant shared bathroom or kitchen facilities. The reason is that section 4 of the *Act* states in part:

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,...

There is no issue in this proceeding that:

- the landlord is the owner of the premises
- the landlord resides in the premises
- the tenant had his own bedroom in the basement of the premises
- there was at least one other person renting a room in the premises during the time that the tenant was living there
- all persons who were residing in the premises shared a common kitchen, living room, dining room, entrance

The landlord's evidence was that the upstairs washroom was shared as between him and all the tenants. The tenant's evidence was that he had sole and exclusive use of the upstairs washroom.

Analysis

Section 4 of the *Act* provides that the *Act* does not apply to living accommodations in which the tenant shares bathroom or kitchen facilities with the landlord.

I found the evidence adduced by the landlord on the issue of the shared use of the kitchen to be reliable and uncontradicted by the tenant.

I find on a balance of probabilities that the landlord and all the tenants shared the bathroom and kitchen facilities and as a result the tenancy does not fall within the jurisdiction of the *Act*. I therefore have no jurisdiction to render any further decision in this matter.

Conclusion

I decline to hear this matter further 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: July 03, 2018

Residential Tenancy Branch