



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC ERP FFT LAT LRE

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

RS and JW appeared as agent on behalf of the landlord in this hearing, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant provided sworn testimony that he had served the landlord with his application for dispute resolution hearing package ("Application") and evidence on July 6, 2018. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the Application and evidence on July 9, 2018, three days after posting.

Issues(s) to be Decided

Do I have jurisdiction under the *Act* to consider the tenant's application for dispute resolution?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings are set out below.

The tenant moved into the home on or about August 2016. Neither the landlord's agents nor the tenant were able to confirm the exact date in the hearing.

The landlord's agents testified in the hearing that the landlord was their elderly father, who shares the home with the tenant. The landlord testified that although the tenant pays monthly rent in the amount of \$1,200.00, he has access to the entire home that the tenant shares with their father.

The landlord's agents testified that there was no physical separation between the tenant's space and their father's, and that the reason this relationship had begun was that all the parties believed it was in the father's best interest to have someone around in case of an emergency. The landlord's agents testified that the tenant's kids use the bathrooms upstairs, and that when both parties had a better relationship, the tenant would regularly have dinner and drinks with their father upstairs. The landlord's agents testified that this had only changed recently with the decline in the relationship.

The tenant testified in the hearing that he had his own separate entrance, as well as his own living space. The tenant testified that he was not the caregiver for the landlord, although he was encouraged to check in on the landlord when the relationship was better.

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 evidence of the landlord and the tenant is that the tenant rented premises which involved the sharing of the bathroom and kitchen facilities with the landlord. Although this may have changed recently with the dispute between both parties, I find that the tenant did have access to the landlord's bathroom and kitchen during this tenancy. Under these circumstances and based on the evidence before me, I find that the *Act*

does not apply to this tenancy. 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: July 20, 2018

Residential Tenancy Branch