



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAT, LRE, OLC, FF

Preliminary matter

Prior to the hearing the Landlord indicated in a telephone call to the Residential Tenancy Branch that the house is his residents and because he shares the kitchen and bathroom with the Tenant the Residential Tenancy Act does not have jurisdiction in this situation.

Consequently the Landlord requested a decision whether the Residential Tenancy Act has jurisdiction in this matter.

The Landlord said this is a roommate agreement as indicated on page two of the tenancy agreement. The Landlord said the roommate clause is a hand written note at the top of the page 2 "this is a rental agreement is for the rental of the master bedroom with onsite, as a roommate". Further the tenancy agreement dated February 14, 2018 and the 1 Month Notice to End Tenancy for Cause dated July 20, 2018 both have the Landlord's address as the same address as the rental unit. The Landlord said the arrangement is to rent a room in his house to comply with his insurance conditions as he is away from the home for long stretches of time with his work. The Landlord continued to say that he works away from home so he has not been in the rental unit since the start of this tenancy, but that does not change that the agreement is a roommate agreement.

The Tenant said that because the Landlord does not live in the rental unit she believes this tenancy is under the jurisdiction of the Residential Tenancy Branch. The Tenant said that she understood the Landlord could come back to the rental unit and stayed there with prior notice to the Tenant. The Tenant said the Landlord did not stay there at any time during the tenancy. The Tenant said that the basement in the unit has a bedroom and bathroom and that is where she thought the Landlord would stay if he returned to the unit. The Tenant continued to say that the Landlord added the roommate clause to the tenancy agreement after it was signed. The Tenant said she did not agree to it, but she did not request to have it removed from the agreement. The Tenant submitted her copy of the agreement and the roommate clause is on it. The Tenant submitted a large volume of emails to support her position that the Landlord has not stayed in the rental unit during the tenancy, so she believes it is not his home.

The Landlord said the Tenant did agree to the roommate clause and the agreement was only for a room to rent. The Landlord continued to say that he has some belongings at the rental unit

including some cloths and tools. The Tenant said the Landlord has removed all his belongings and has not lived in the house for a long time.

After reviewing the testimony of both parties and reviewing the evidence submitted by the Tenant, I find the following. The strongest piece of evidence to determine the relationship and situation between the parties is the agreement signed by the both parties. The agreement shows both parties have the same address and both parties agree the roommate clause was added to the agreement and it was not removed. The Tenant said she did not agree to it but she did not request to have it removed. The Landlord said the Tenant agreed to the roommate clause. The Tenant submitted the tenancy agreement in her evidence and the Tenant's copy of the agreement has the roommate clause on it. As well, the One Month Notice to End Tenancy for Cause dated July 20, 2018, has the Landlord's address as the same address as the rental unit address.

Consequently I accept the Landlord's testimony and the documents that the Landlord's address is the same as the rental unit. A person's residence can be their residents even if they do not live there regularly. The Landlord said he could return to the rental unit at any time and stay there. The Tenant did not dispute this. Therefore I find the Landlord's residence is at the rental unit. I find the arrangement between the parties is not a tenancy, because the Applicant and the Respondent would share kitchen and bathroom space if the Landlord returns to the rental unit. Section 4(c) of the Act states that the Act does not apply to situation where there is shared kitchen and bathroom with the owner of the property. Consequently there is no tenancy between the Applicant and the Respondent; therefore I do not have jurisdiction to make a finding in this matter. The Applicant may want to seek legal advice to determine how to proceed with her claim.

In the absence of evidence to show there is a tenancy between the Applicant and Respondent the Residential Tenancy Branch does not have jurisdiction in this situation. I dismiss the application as I find no authority to decide this matter under the *Residential Tenancy Act*.

Conclusion

The application is dismissed for 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: September 17, 2018

Residential Tenancy Branch