



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

On July 30, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession, and for a monetary order for unpaid rent or utilities. The matter was set for a conference call hearing.

Both parties attended the teleconference hearing. The Landlord was assisted by legal counsel. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the start of the hearing the Tenant Mr. K.P. requested an adjournment of the hearing. He stated that another Tenant had died in the rental property, and the coroner had just left the property. Mr. K.P. testified that the deceased was renting a room at the property.

The Landlords counsel objected to an adjournment submitting that a delay would introduce significant prejudice to the Landlord since rent has not been paid for 6 months.

I find that it would present a significant prejudice to the Landlord to adjourn the hearing to a later date. The hearing proceeded.

The Landlord applied for an order of possession based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 25, 2018. The Landlord did not provide a copy of the 10 Day Notice. The Landlord testified that he cannot provide a copy of the 10 Day notice as it is now lost.

The Tenants testified that they have no recollection of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities from the Landlord in May 2018.

The Landlord testified that he issued another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 20, 2018. The Landlord failed to amend his application to include the 10 Day Notice in this hearing. Consequently the 10 Day Notice dated August 20, 2018 was not considered in this hearing.

Both parties testified that they share the kitchen and bathroom and that they participated in a recent hearing where the Arbitrator found that the living arrangement is a tenancy under the Act.

Issues to be Decided

- Is the living arrangement a tenancy under the Act?

Background

The Tenants testified that that they are Tenants in common and are not covered under a single tenancy agreement. The parties submitted they have separate tenancy agreements with the Landlord.

Mr. K.P. testified that he moved into the rental property, along with Ms. K.M. on January 1, 2016, and they pay \$400.00 rent each month and they did not pay a security deposit.

Mr. J.N. testified that he moved into the rental property in July or August 2016, and he pays \$400.00 per month and he did not pay a security deposit.

The Tenants submitted that they rent rooms in the Landlord's house. They submitted that they share a kitchen and bathroom with the owner/ Landlord. The Tenants testified that the Landlord has not lived in the rental unit since May 2018, because he was removed by the police.

The Landlord testified that it is his home and he confirmed that he is sharing a kitchen and bathroom with the Tenants.

The Landlord provided a sworn affidavit dated July 30, 2018, including the following:

- *I am the owner of the house.*
- *I have a verbal agreement for Mr. K.P and Ms. M.M to rent a portion of my house.*
- *Mr. K.P. called police on April 30 and alleged that I threatened him and I was arrested and released with conditions not to have contact or go to my house.*
- *I am informed that the Tenants Mr. K.P and Ms. K.M. have been eating my food since I left.*
- *I am distressed that they have refused to leave my home.*

Analysis

Section 4 of the Act provides that the Act does not apply to living accommodation in which the Tenant shares bathroom or kitchen facilities with the owner of that accommodation.

Residential Tenancy Policy Guideline # 9 Tenancy Agreements and Licenses To Occupy provides:

A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month.

...

Some of the factors that may weigh against finding a tenancy are:

- *Payment of a security deposit is not required.*
- *The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.*
- *The occupier pays property taxes and utilities but not a fixed amount for rent.*
- *The owner, or other person allowing occupancy, retains the right to enter the site without notice.*
- *The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.*

- *The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.*

Section 64 of the Act provides that the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

Based on the above, the evidence and testimony before me and on a balance of probabilities, I make the following findings:

I find that the Landlord is the owner of the property. The parties agreed that they share the kitchen and bathroom. I find that the Act does not apply to living accommodation in which a Tenant shares a bathroom or kitchen with the owner of that accommodation.

I find that the parties entered into the living arrangements in 2016. I acknowledge that the Landlord may have been recently removed by the police and may be restricted from returning to his home by the Courts; however, I do not find that this recent circumstance, which may be temporary, changes the living arrangement to be a tenancy under the Act.

I distinguish my Decision from the Decision of July 16, 2018, where the Arbitrator found that the tenancy fall under the jurisdiction of the Act because at the time the living arrangements were made in 2016, the Landlord was living in the unit and sharing the kitchen and bathrooms with the occupants. I find that a temporary period of time where the Landlord is not living in the house does not change the arrangement to be a tenancy under the Act. When the Landlord returns to his home, the parties or other occupants will continue to share the kitchen and bathrooms.

I decline jurisdiction to hear the matter as I find that the Act does not apply to living accommodation in which the Tenant shares bathroom or kitchen facilities with the owner of that accommodation.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was not successful with his application, I decline to award the recovery of the filing fee.

Conclusion

I find that the owner of the home shares the kitchen and bathrooms with Tenants.

I decline jurisdiction to hear the matter as I find that the Act does not apply to living accommodation in which the Tenant shares bathroom or kitchen facilities with the owner of that accommodation.

The Landlord's application is dismissed.

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 27, 2018

Residential Tenancy Branch