



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, MNDCT, LRE, RR

Introduction

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

- an order regarding a disputed additional rent increase, pursuant to section 43;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70; and
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

"Tenant DN" did not attend this hearing, which lasted approximately 24 minutes. The landlord and tenant TN ("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 tenant confirmed that she had permission to speak on behalf of tenant DN as an agent at this hearing (collectively "tenants").

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package from before filing her application. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's written evidence package. Although the landlord said that he did not serve his evidence to the tenants for this application, the tenant confirmed that she already had the evidence from before and had already reviewed it.

Therefore, I found no prejudice to the tenants in considering the evidence at the hearing and in my decision.

Preliminary Issue – Jurisdiction to hear Matter

The landlord confirmed that he is the owner of the rental unit. He stated that he shares the downstairs kitchen with the tenant, even though there is a kitchen that he has used upstairs which is currently out of service. He claimed that the tenant signed three room rental agreements with him in March, May and June 2018, which he provided for this hearing, indicating in two separate sections that he is sharing the kitchen with the tenant.

The tenant disputed the landlord's claims. She did not dispute that he was the owner of the rental unit. She claimed that she does not share the downstairs kitchen with the landlord, as he only uses the upstairs kitchen. She said that she has a witness to this but did not produce this person to testify at this hearing. She agreed that she signed two room rental agreements in May and June 2018 with the landlord and while they said that she shared the kitchen with the landlord, she said that this was not true, the landlord told her not to worry about it, and he made her sign the agreements for strata purposes. The landlord denied this, stating that the agreements were not required by strata and had nothing to do with them. The tenant confirmed that she did not provide any written information on the agreements or anywhere else, indicating that she did not share the kitchen with the landlord.

Both parties agreed that there was a previous Residential Tenancy Branch ("RTB") hearing regarding this tenancy, attended only by the landlord and not the tenant. A decision, dated October 10, 2017, was issued by a different Arbitrator for that hearing. The file number for that hearing appears on the front page of this decision. The Arbitrator decided that this tenancy was excluded by section 4(c) of the *Act* because the landlord-owner shared the kitchen with the tenant. The tenant filed for a review of that decision, after which a review consideration decision, dated October 24, 2017, was issued by a different Arbitrator. The Arbitrator upheld the October 10, 2017 decision and stated that the tenant failed to provide proof that the parties did not share a kitchen at the rental unit.

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 he shares the same downstairs kitchen with the tenant. The tenant signed at least two room rental agreements with the landlord, indicating in two different places in each agreement that she was sharing a kitchen with the landlord. She did not indicate in writing on those agreements or anywhere else that she was not sharing the kitchen with the landlord. The tenant had the option to not sign the agreements. Further, both parties have two previous RTB decisions made by two different Arbitrators declining jurisdiction because they found that the landlord and tenant shared a kitchen and no evidence from the tenant to the contrary.

The *Act* specifically excludes the owner of a rental unit who shares a kitchen with the tenant. Accordingly, I find that I am without jurisdiction to consider the tenants' 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 RTB. Accordingly, I decline jurisdiction over the tenants' application. I informed both parties of my decision verbally during the hearing and notified the tenant that she could pursue the tenants' claims at a Court of competent jurisdiction.

Conclusion

I decline jurisdiction over the tenants' application. I make no determination on the merits of the tenants' 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: September 20, 2018

Residential Tenancy Branch