



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MMRL, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent and to recover the fee for filing this Application for Dispute Resolution.

Legal Counsel for the Landlord stated that on June 21, 2018 the Application for Dispute Resolution hearing package was served to the Tenant by a process server. The Tenant acknowledged receipt of these documents.

On October 17, 2018 the Landlord submitted 56 pages of evidence to the Residential Tenancy Branch and on October 30, 2018 the Landlord submitted an additional 21 pages of evidence. The Landlord and the Tenant agree that this evidence was served to the Tenant within the timelines established by the Residential Tenancy Branch Rules of Procedure, and it was accepted as evidence for these proceedings.

On October 22, 2018 the Tenant submitted 21 pages of evidence to the Residential Tenancy Branch and on November 02, 2018 the Tenant submitted an additional 13 pages of evidence. The Landlord and the Tenant agree this evidence was served to the Landlord within the timelines established by the Residential Tenancy Branch Rules of Procedure, and it was accepted as evidence for these proceedings.

On October 23, 2018 and October 25, 2018 the Tenant submitted documents related to service to the Residential Tenancy Branch. Legal Counsel for the Tenant stated that these documents were not served to the Landlord. As the documents were not served to the Landlord, they were not accepted as evidence for these proceedings.

On November 07, 2018 the Landlord submitted 11 pages of evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was personally served to the Tenant on November 06, 2018. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

As the evidence that was served to the Tenant on November 06, 2018 was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure, the Tenant was given the opportunity to request an adjournment for the purposes of having more time to consider the Landlord's evidence. Legal Counsel for the Tenant stated that more time was not needed and that the Tenant was prepared to proceed with the hearing.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the documents accepted as evidence have been reviewed, but are only referenced in this written decision if it is directly relevant to my decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent?

Background and Evidence

The Landlord and the Tenant agree that the Tenant moved into this residential complex on November 04, 2009 and that she moved out on January 26, 2017.

The Landlord and the Tenant agree that the Landlord owns this residential complex and that she lives on the main floor of the complex. The Tenant contends that she always lived in the main floor of the rental unit with the Landlord and her family, where she had her own bedroom. The Landlord contends that the Tenant always lived in a suite on the lower level of the rental unit, which had its own bedroom, bathroom, and kitchen facilities.

The Tenant stated that at times the lower suite was rented out to various third parties.

The Landlord contends that the Tenant agreed to pay monthly rent of \$600.00. The Tenant contends that she did not agree to pay rent. The Landlord stated that the Tenant continually promised to pay the rent that was owed but never did so. The Landlord and the Tenant agree that the Tenant has never paid any rent to the Landlord.

The Tenant stated that she was able to live in the residential complex, without charge, because she was married to a relative of the Landlord. The Landlord stated that the Tenant was married to her nephew but she was living in the lower suite because they were having marital problems.

The Landlord submitted a copy of a tenancy agreement, which the Landlord contends was signed by the Tenant. The Tenant contends that she did not sign this tenancy agreement.

The Tenant provided examples of her signature on various documents. Legal Counsel for the Tenant argued that these signatures are not similar to the signature on the tenancy agreement. Legal Counsel for the Landlord argued that the Tenant's signatures are different on the documents submitted in evidence, which shows that her signature is inconsistent.

The Landlord is seeking compensation, in the amount of \$35,000.00, for unpaid rent. The Landlord contends that the Tenant owes more than \$35,000.00 in rent but the claim is limited to \$35,000.00 as that is the maximum amount that can be awarded at these proceedings.

The Landlord and the Tenant agree that in the Spring of 2017 the Landlord loaned the Tenant \$5,500.00. The Tenant submits that the Landlord would not have loaned this amount to the Tenant if the Tenant owed the Landlord money for rent. The Landlord contends that this money was loaned to the Tenant because she believed the Tenant would be paying all of the rent owed.

The Tenant contends that I do not have jurisdiction in this matter as the Tenant shared kitchen facilities with the Landlord. The Landlord contends that I do have jurisdiction in this matter as the Tenant had her own private kitchen facilities in the lower suite.

On October 17, 2018 the Landlord submitted several affidavits from friends and family. In these various affidavits all of the individuals declared, in part, that the Tenant lived with the Landlord and her family in the residential complex until January 26, 2017 and many of the individuals declared, in part, that the Tenant frequently attended community events with the Landlord and her family.

On October 17, 2018 the Landlord submitted affidavits from the Landlord and the Landlord's husband, in which they declared, in part, that the Tenant was provided with "room and board".

The Tenant contends that the information provided in the affidavits submitted to the Residential Tenancy Branch on October 17, 2018 corroborate her submission that she lived in the upper portion of the rental unit with the Landlord and her family. The Tenant notes that none of the affidavits submitted on that date suggest that she lived in the suite on the lower portion of the residential complex.

Legal Counsel for the Landlord stated that the affidavits submitted on October 17, 2018 were submitted, in part, to establish that the Tenant lived in the residential complex. She contends that this was necessary because in an electronic message sent on January 29, 2018 the Tenant indicated that she had never lived at the residential complex.

The Tenant agreed that in an electronic message sent on January 29, 2018 she indicated that she had never lived at the residential complex. The Tenant contends that she sent this message because she was being harassed by the Landlord and she was responding to an anonymous message.

On October 30, 2018 the Landlord submitted several affidavits from friends and family. In these various affidavits all of the individuals declared, in part, that the Tenant resided in the suite in the lower portion of the residential complex. The Tenant contends that the declarations that she lived in the lower suite are untrue.

On October 30, 2018 the Landlord submitted an affidavit from the Landlord who declared, in part, that:

- she often provides rides to the people renting the lower suite;
- residents of the community would often see the Landlord provided the Tenant with rides to the grocery store or the temple; and
- other than ride sharing she and her family had no relation with the Tenant and she kept her distance from the Tenant.

On November 07, 2018 the Landlord submitted an affidavit from an individual who declared, in part, that they went to the residential complex for the purposes of having clothing tailored by the Tenant, at which time they concluded that the Tenant resided in the suite in the lower portion of the residential complex. On that date the Landlord submitted an affidavit from a second individual who declared, in part, that they went to the residential complex for the purposes of having eyebrow threading, at which time they concluded that the Tenant resided in the suite in the lower portion of the residential complex.

The Tenant stated that she did not operate a business in the lower portion of the residential complex, she does not know the individuals who declared she provided services to them; and she has not provided services to them.

On November 07, 2018 the Landlord submitted an affidavit from a process server who declared, in part, that on June 21, 2018 he served documents to the Tenant after making contact with her by knocking on the door at the lower level of the residential complex.

On November 07, 2018 the Landlord submitted an affidavit from a friend of the Landlord's sister who declared, in part, that she has visited in the residential complex and that the Tenant lives in the lower suite.

On November 07, 2018 the Landlord submitted an affidavit from an individual who declared, in part, that she has lived in the lower suite since August of 2018 and that the Landlord sometimes drives her to work and shopping.

On November 07, 2018 the Landlord submitted an affidavit from an individual who declared, in part, that she was friends with the Tenant and that the Tenant told her she lives in suite in the lower portion of the residential complex. The Tenant stated that she is not personal friends with this individual and that she did not provide her with the intimate information disclosed in the affidavit.

On November 07, 2018 the Landlord submitted another affidavit from the Landlord who declared, in part, that:

- the Tenant operated an eyebrow threading and tailoring business in the lower part of the residential complex;
- she did not have a close personal relationship with the Tenant;
- she attended the Tenant's wedding as she was invited to the wedding by the groom's relatives;
- the Tenant is in photographs with the Landlord because they have familial connections; and
- the Tenant did travel to Victoria with the Landlord's siblings, but only because the Tenant invited herself and the siblings did not wish to decline the invitation.

On October 22, 2018 the Tenant submitted an affidavit from an individual who declared, in part, that she is the Tenant's personal friend; that she has visited the Tenant in the

residential complex approximately 25 times; and that she shared the kitchen and bathroom with the Landlord.

The Landlord stated that she typically provided meals to the Tenant as part of her “room and board”. She stated that she would typically leave food for the Tenant in the upstairs kitchen, the Tenant would typically help herself to that food, and the Tenant would frequently dine when she returned home from work, after the Landlord’s family had dined. She stated that the Tenant cooked in the kitchen in the lower suite approximately twice a week and that she never cooked in the Landlord’s kitchen.

The Tenant stated that she typically ate meals with the Landlord’s family. She stated that she never cooked in the kitchen in the lower suite and that she cooked in the Landlord’s kitchen two or three times per week.

The Landlord submits that the Tenant could not have lived in the upper portion of the residential complex as there was no room for the Tenant due to the fact the Landlord, the Landlord’s husband, and the Landlord’s two children were occupying the three bedroom home and the fact they frequently had other family members staying with them. The Tenant submits that when she first moved into the rental unit the Landlord’s children shared a bedroom.

Legal Counsel for the Landlord argued that the Tenant submitted little evidence to corroborate her claim that she did not live in the lower suite.

Legal Counsel for the Tenant argued that the content of the affidavits submitted by the Landlord changed after the Tenant raised the issue of jurisdiction. Specifically she argued that the Landlord initially argued that the Tenant acted as a member of the family and the Landlord subsequently argued that she occupied in the lower portion of the rental unit only.

Analysis

Before considering the merits of this Application for Dispute Resolution I must determine whether I have jurisdiction in this matter. Section 4(e) of the *Residential Tenancy Act* (Act) stipulates that this Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

In determining jurisdiction I find it is not necessary for me to determine whether the Tenant lived in the residential complex as a member of the family, as the Tenant

contends, or whether she lived in the basement suite, as the Landlord contends. In determining jurisdiction I find it is not necessary for me to determine whether the Tenant operated a business in the lower portion of the residential complex, as the Landlord contends. Even if the Tenant had sole use of the basement suite and she operated a business out of this area, I would not have jurisdiction in this matter if the Tenant also shared the kitchen on the upper level of the complex with the Landlord.

On the basis of the undisputed evidence I find that the Landlord provided the Tenant with meals during this tenancy. Even if I accepted the Landlord's testimony that the Tenant cooked in the lower suite two or three times per month and I completely disregarded the Tenant's testimony that she never cooked in the lower suite, the undisputed evidence is that the vast majority of the Tenant's meals were prepared in the Landlord's kitchen and that the Tenant frequently accessed that kitchen to obtain those meals. I therefore find that the Tenant shared the Landlord's kitchen and, pursuant to section 4(e) of the *Act*, I do not have jurisdiction in this matter.

Conclusion

I do not have jurisdiction in this matter.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 19, 2018

Residential Tenancy Branch