



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 21, 2018 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order setting or suspending conditions on the Landlord's right to enter the rental unit;
- an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlord attended the hearing and was accompanied by G.A. and N.M., witnesses. All giving oral testimony provided a solemn affirmation.

The Tenant testified that the Landlord was served with the Application package and documentary evidence by in person. The Landlord acknowledged receipt. The Landlord testified the Tenant was served with documentary evidence in person. The Tenant acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were advised to refer me to any documentary evidence upon which they wished to rely. 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 Issue – Jurisdiction

The Landlord submitted that I do not have jurisdiction to hear this matter. She testified that the Landlord, G.A., and family members occasionally prepare meals and use the washroom in the Tenant's rental unit. Photographs of people eating around a table were submitted in support. Specifically, the Landlord testified she prepares large meals for her family that require the use of two ovens.

Section 4(c) of the *Act* confirms that the *Act* does not apply to living accommodation in which the Applicant shares bathroom or kitchen facilities with the owner of that accommodation. I find the Landlord occasionally uses the kitchen in the Tenant's rental unit to prepare meals. However, I find it is more likely than not that the Landlord's obligation under the verbal agreement extends only to cleaning common areas, but does not include a right to prepare meals or use the washroom.

The *Act* provides tenants with protections from unreasonable entry. Specifically, section 28 of the *Act* confirms a tenant is entitled to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, and use of common areas free from significant interference. Section 29 of the *Act* sets out the circumstances in which a landlord may enter a rental unit. However, the need to cook large family meals is not a basis upon which to enter a rental unit to use kitchen or bathroom facilities. In light of the above, I find the *Act* does apply to the verbal tenancy agreement between the parties.

Issues to be Decided

1. Is the Tenant entitled to an order setting or suspending conditions on the Landlord's right to enter the rental unit?
2. Is the Tenant entitled to an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

Pursuant to a verbal tenancy agreement, the Tenant rents a room in half a duplex. The remainder of the space is currently shared with 7 other tenants. The Tenant pays rent in the amount of \$490.00 per month but did not pay a security deposit. The Landlord and her family occupy the other half of the duplex. The entire property is owned by the

Landlord, G.A., and V.M. Pursuant to the verbal agreement between the parties, the Landlord provides cleaning of common areas, and supplies laundry detergent and toilet paper. The Tenant acknowledged during the hearing that she will be vacating the rental unit on December 29, 2018.

The Tenant requests an order suspending or setting conditions on the Landlord's right to enter the rental unit. The Tenant also seeks an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement. During the hearing, the Tenant was asked repeatedly to make submissions or provide evidence related to these aspects of her claim. Although the Tenant confirmed the Landlord has entered the rental unit to clean as per the tenancy agreement, she did not make any submissions regarding the restrictions she would like to see placed on the Landlord. Neither did she refer me to any part of the *Act*, regulation, and/or the tenancy agreement with which she wanted the Landlord to comply. Rather, the Tenant seemed to be primarily concerned with compensation to which she feels entitled, although no such application has been made.

The Landlord's submissions were primarily directed to the applicability of the *Act*.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

The Tenant's request for an order suspending or setting conditions on the Landlord's right to enter the rental unit, and an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement, is dismissed. I find the Tenant provided insufficient evidence and submissions for me to conclude such an order would be appropriate. As noted above, the Tenant's primary concern appeared to be related to monetary compensation, which was not part of the Application.

I also note the Tenant has agreed to vacate the rental unit on December 29, 2018.

The parties are encouraged to visit the Residential Tenancy Branch website to explore and consider the rights and responsibilities of landlords and tenants under the Act. Sections 28 and 29 of the Act may be of particular interest.

Conclusion

The Application is dismissed, without leave to reapply.

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: December 14, 2018

Residential Tenancy Branch