



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicant on September 1, 2018. The Applicant applied for compensation for monetary loss or other money owed and return of a security deposit.

The Applicant and Respondent appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Applicant had submitted evidence prior to the hearing. The Respondent had not submitted evidence. I addressed service of the hearing package and evidence.

While asking the parties about service, the Applicant advised that the Respondent was living at the rental unit while she was living there at the end of the tenancy. I asked the parties further about the living arrangements at the rental unit.

The parties agreed the Applicant rented a room in a house that has multiple rooms or rental units. The Respondent advised that he owns the house and rents out rooms in the house. He said he has always maintained a room at the house.

The Applicant testified that she moved into the house November 1, 2017. The Applicant said the Respondent started sharing a bathroom and kitchen with her in August of 2018. The Respondent agreed he shared a bathroom and kitchen with the Applicant and did not dispute the dates provided. Both parties agreed the Applicant vacated the house August 31, 2018.

The Respondent testified as follows. The Applicant rented a room downstairs in the house. He had a room upstairs at the house. There are three bathrooms in the house. All three bathrooms are available for use by anyone in the house. There are two kitchens in the house, one upstairs and one downstairs. It is understood that anyone in the house can use either kitchen. The bathrooms and kitchens in the house are communal among residents. He did in fact use the facilities shared with the Applicant prior to August of 2018.

The Respondent explained that he has a room in the house here, has a residence in another province and business in yet another province. He said he travels between the three. He testified that he stayed in his room at the rental unit address between November 2017 and August 2018. He confirmed that the house is his only address in the province and that he lives there when he is in the province. He confirmed that he used the bathroom and kitchen in the downstairs of the house between November 2017 and August 2018.

The Applicant testified as follows. When she moved into the house, she was told by the suite manager who manages everyone that she could use the upstairs bathroom and kitchen if she wished but that it is more convenient to use the facilities on the floor she was living on. The Respondent did not have a room in the house when she moved into the rental unit. To her knowledge, all the bedrooms in the house were occupied by others.

The Applicant questioned why the Respondent moved downstairs to where she was living if he had a room upstairs at the house. The Respondent testified that he moved downstairs because the floors upstairs were being refinished.

I asked the Applicant to explain why she disputes that the Respondent has always maintained a room at the house. She said he was not in the province when she moved in. She testified that she met the Respondent for the first time in July of 2018. The Applicant acknowledged that it was possible the Respondent maintained a room in the upper part of the house without her knowing. She also acknowledged that there may have been a time between November 2017 and August 2018 when the Respondent stayed in a room at the house. The Applicant said she only went upstairs in the house once and that was in August of 2018.

There was no evidence submitted to me in relation to this issue of jurisdiction.

Section 4(c) of the *Residential Tenancy Act* (the “*Act*”) states that the *Act* “does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation”.

I am not satisfied that I have jurisdiction in this matter. There is no issue that the Respondent is the owner of the rental unit. I accept the testimony of the Respondent in relation to his use of the house, communal bathrooms and communal kitchens. There was nothing about the testimony of the Respondent that caused me to question his credibility. I have no evidence before me that contradicts his testimony. Nor do I have evidence before me that supports the position of the Applicant.

Further, the Applicant acknowledged that the Respondent may have stayed upstairs at the house and may have had a room in the house prior to August without her knowing. I am not satisfied based on the testimony of the Applicant that she was fully aware of what was happening in the upper part of the house given she testified that she only went up there once and that was in August of 2018.

There was no issue that the Applicant and Respondent shared a bathroom and kitchen in August of 2018 prior to the Applicant moving out.

In these circumstances, I find that I do not have jurisdiction in this matter pursuant to section 4(c) of the *Act*.

Conclusion

Pursuant to section 4(c) of the *Act*, the *Act* does not apply and I have no jurisdiction to decide 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: January 08, 2019

Residential Tenancy Branch