



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, MNDCT, OLC, RR, FFT

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution submitted by the Applicants under the *Residential Tenancy Act* (“the *Act*”) requesting to suspend or set conditions on the Landlord’s right to enter the rental unit, to request an order to have the Landlord comply with the legislation, for an Order for the Landlord to return the Tenants’ personal property, for a monetary order for loss or other money owed, and to recover the filing fee paid for this application. The matter was set for a conference call.

Both the Applicants and the Respondent attended the conference call hearing and were each affirmed to be truthful in their testimony.

Each party was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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 Matter- Caution

During the hearing, both the Respondent and the Applicants were cautioned several times regarding personal conduct, outbursts, and the interruption to the testimony of the other party.

The parties to this dispute were advised twice of the expected appropriate conduct during these proceedings. When the parties continued to interrupt each other, the parties were further cautioned continued disruption to the proceedings could result in their removal from the hearing.

Preliminary Matter- Jurisdiction

The initial hearing for this application had been adjourned due to a jurisdictional issue, regarding if the location of the rental property. Specifically, the question had been raised of whether the rental property situated on First Nation Lands.

During this hearing, the Applicants testified that property was not located on First Nation Lands. The Applicants provided a letter from the city, stating that the rental property was not located on First Nation Lands into documentary evidence.

The Respondent, who had not attended the initial hearing, testified that she agreed that property was not on First Nation Lands. However, the Respondent testified that the rental unit was a shared accommodation and did not fall under the *Act*. The Respondent testified that she lived on the property with Applicants and that the unit has only one kitchen and that they shared this kitchen.

Both the parties agreed that the Respondent owns the property that is listed in this dispute.

The Applicants agreed that they lived on the rental property with the Respondent. However, the Applicants testified that there were two kitchens, and that they had a separate rental unit and did not share a kitchen with the Respondent. The Applicants testified that they submitted two Shelter Information forms into document evidence, that they feel proved that they did not share a kitchen with the Respondent.

The Applicants also testified that the Respondent had issued them a Two-Month notice to end tenancy, using a Residential Tenancy Branch (RTB) form. The Applicants argued that the Respondent's use of the RTB form shows that the Respondent viewed their living arrangement a residential tenancy and therefore, falls under the jurisdiction of the *Act*. The Applicants submitted a copy of the Two-Month Notice; they received from the Respondent into document evidence.

The Respondent testified that she had allowed the Applicants to live with her as she had found out that they were homeless, and she wanted to help them out for a few weeks. The Respondent testified that she had never intended to enter into a residential tenancy agreement with the Applicants.

The Respondent also testified that she had served a Two-Month notice to end tenancy form to the Applicants; however, that it had been done in error. The Respondent testified that when the living arrangement did not work out, she had been misinformed about what she needed to do to get the Applicants out of her home. The Respondent testified that she had withdrawn the Notice after she had been advised that this living arrangement did not fall under the *Act*.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 4 of the *Act* defines the types of housing agreement that are not covered by the *Act*. Section 4 of the *Act* states the following:

What this Act does not apply to

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,

During the hearing, I heard contradictory testimony from both parties to this dispute, regarding the number of kitchens in the rental property. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, that would be the Applicants.

I have reviewed the documentary evidence submitted into these proceedings by the Applicants; from the submissions made, there appears to be discrepancies and inconstancies in these documents. On the balance of probabilities, I find that there is inconclusive evidence to show whether a tenancy situation exists that would fall under the jurisdiction of the *Act*.

For the reason stated above, I find that I must decline to accept jurisdiction over the Applicants' dispute with the Respondent.

The Parties are at liberty to seek an appropriate legal remedy to this dispute.

Conclusion

For a reason stated above, I decline jurisdiction to resolve this dispute. I have made no determination on the merits of the Applicants applications. 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: January 25, 2019

Residential Tenancy Branch