



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPR-DR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicant on December 18, 2018. The Applicant sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 30, 2018 (the "Notice"). The Applicant sought reimbursement for the filing fee.

The Representative appeared at the hearing for the Applicant. Nobody appeared for the Respondent. I explained the hearing process to the Representative who did not have questions when asked. The Representative provided affirmed testimony.

After obtaining details about service, I asked the Representative about the tenancy agreement in this matter. The Representative had submitted a written note which states the "tenants" were sharing the house with the owner who has since passed away.

The Representative confirmed the rental unit is one residence. He testified that the Respondent rented a room from the owner. The Representative confirmed the Respondent shared a kitchen with the owner. He said the Respondent moved into the house in May or June of 2018 and that the owner passed away in August of 2018.

I asked the Representative if a tenancy agreement was entered into with the Respondent after the owner passed away. He said nothing had been signed and that the Respondent was given two months to vacate.

I told the Representative it was my view the RTB does not have jurisdiction over this matter pursuant to section 4 of the *Residential Tenancy Act* (the "Act"). The Representative submitted that a tenancy agreement was entered into with the Respondent as she was given a new term and paid rent. I asked the Representative if

the Respondent was served with a notice to end tenancy under the *Act* in relation to the two months. I understood the Representative to say she was not or he did not know if she was.

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

There is no issue that the Respondent shared kitchen facilities with the owner of the house when she moved into the house and that this continued until the owner passed away. The *Act* did not apply at this time given section 4(c).

I am not satisfied that the *Act* became applicable when the owner passed away. The Representative submitted that changing the term and collecting rent established a tenancy. I do not accept this in the circumstances. I find that the prior arrangement simply continued, and that no new tenancy agreement was entered into with the Respondent. I note that there is no evidence submitted that a new tenancy agreement was entered into. The Representative acknowledged nothing was signed. Further, the Respondent was given two months to vacate. I am not satisfied she was given a notice to end tenancy issued under the *Act* and find this indicates that the parties were not treating this as a new tenancy that was subject to the *Act*.

In the circumstances, I find that the *Act* does not apply given section 4(c). I therefore have no jurisdiction to decide this matter.

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 31, 2019

Residential Tenancy Branch