



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing dealt with the an application brought forth by the applicants pursuant to the *Residential Tenancy Act* ("the Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both applicants and the respondent appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The applicants testified that the respondent was served, by way of Registered Mail, their Application for Dispute Resolution hearing package ("dispute resolution hearing package"), which included the applicants' evidence.

The respondent confirmed receipt of the dispute resolution package and the applicants' evidence. Therefore, I find that the respondent was served with the dispute resolution hearing package and the applicants' evidence in accordance with section 89 of the Act.

The respondent testified that a copy of her evidence package was served to the applicants. The applicants confirmed receipt of the respondent's evidence. Therefore, I find that the applicants were served with the respondent's evidence.

Preliminary Issue –Jurisdiction

This tenancy was the subject of an earlier dispute resolution hearing before the Residential Tenancy Branch (RTB). That hearing dealt with the applicants' application seeking authorization to obtain a return of their security deposit.

Both parties referred to the previous RTB decision, dated August 14, 2018, in which the Arbitrator found that pursuant to section 4(c) of the Act, the Act did not apply to the tenancy and that the application before her could not be considered for lack of jurisdiction. The other RTB file number cited by the parties is referenced on the first page of this decision.

During the hearing, the issue of jurisdiction was raised once again. The applicants asserted that they wished the RTB to consider new evidence which was not in their possession during the earlier hearing. As evidence, the applicants submitted recordings of telephone conversations with the respondent, the contents of which, according to the applicants, demonstrate that the respondent did not have access to the unit in a manner which would preclude the tenancy from being excluded pursuant to section 4(c) of the Act which provides, in part the following:

- 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.*

The rental unit in this matter is defined as one bedroom located in a multi-bedroom townhouse. The respondent is the owner of the townhouse and entered into separate tenancies with respect to each bedroom. The respondent testified that she maintained the right to access the townhouse and to periodically stay overnight in the townhouse, during which she would have the ability to share common facilities such as the kitchen and bathroom with all occupants of the townhouse—including the applicants.

The respondent was permitted to provide limited, specific post-hearing evidence which was discussed by the parties during the hearing. The respondent provided copies of a tenancy agreement between herself and occupants of another room, which the respondent asserted demonstrates that her agreement with the occupants of another

room granted her the right to access the townhouse in the manner described above. As a result of this arrangement, the respondent's right to access the townhouse affected all tenancies, including the tenancy which is the subject of this application. Therefore, a tenancy, as defined by the Act, did not exist due to the respondent's ability to access and periodically reside in the townhouse, and pursuant to section 4(c) of the Act, the Act does not apply.

I find that the recordings submitted by the applicants do not serve to demonstrate that the respondent did not maintain the right to access the townhouse, and, by extension, share common areas such as kitchen and bathroom with the occupants.

After reviewing the respective evidence and testimony provided by the parties, I find that there is no new evidence before me which impacts the August 14, 2018 decision rendered by the previous Arbitrator in which jurisdiction was declined. The parties have not demonstrated, by way of additional evidence or testimony, that the tenancy is precluded from the application of section 4(c) of the Act, such that the Act would not apply.

Rather, the testimony and evidence provided by the parties affirms that the tenancy is excluded pursuant to section 4(c) of the Act. Therefore, there is no new information before me which would lead me to set aside the previous Arbitrator's findings with respect to lack of jurisdiction.

Based on the foregoing, I find that the Act does not apply to the matter before me and that the RTB does not have jurisdiction to consider the applicants' application.

Conclusion

I find that pursuant to section 4(c) of the Act, the Act does not apply to the matter before me and that the RTB does not have jurisdiction to consider the applicants' application.

The applicants' claim is dismissed in its entirety due to lack of 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: April 02, 2019

Residential Tenancy Branch