



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, CNR, ERP, LRE, OLC

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlords attended the hearing via conference call and provided testimony via their translator, K.C. The tenant did not attend. The landlords stated that the tenant was served with the notice of hearing package via Canada Post Registered Mail on April 5, 2019. The landlords through their translator stated that the tenant was served with the submitted documentary evidence via Canada Post Registered Mail on April 19, 2019.

However, reasons provided below state why I may not dismiss this application with leave to reapply.

The landlords provided testimony regarding the address for this dispute. The landlords clarified that they share the property with the tenant and rent her a “room”. The landlords stated that the tenant has her own bathroom, but that the kitchen and living room is shared with the landlord/owner.

Section 4 of Act states in part that,

What this Act does not apply to

4 This Act does not apply to

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,**
- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,
- (e) living accommodation occupied as vacation or travel accommodation,
- (f) living accommodation provided for emergency shelter or transitional housing,
- (g) living accommodation
 - (i) in a community care facility under the *Community Care and Assisted Living Act*,
 - (ii) in a continuing care facility under the *Continuing Care Act*,
 - (iii) in a public or private hospital under the *Hospital Act*,

- (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
- (v) in a housing based health facility that provides hospitality support services and personal health care, or
- (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,
- (h) living accommodation in a correctional institution,
- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,
- (j) tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies, or
- (k) prescribed tenancy agreements, rental units or residential property.

As such, I find that the Act does not apply in this circumstance based upon the landlords' testimony that a kitchen and living room is shared. I decline jurisdiction in this matter.

After some consideration, I find that I do not have jurisdiction to hear the tenant's application for dispute and dismiss the tenant's application for 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: May 03, 2019

Residential Tenancy Branch