



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, FF

Introduction

The tenant applies to set aside a notice purporting to end her tenancy. She has moved away since her application was made. She also seeks a monetary award to recovery a \$250.00 security deposit, for the cost of medication required due to a verbal assault, for the cost and inconvenience of moving, for wage loss, emergency accommodation and for the repair cost to a stained glass item.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The landlord raises the preliminary objection that her relationship with the tenant is excluded by s. 4(c) of the *Residential Tenancy Act* (the “Act”) which provides that the Act and thus this dispute resolution mechanism does not apply to “living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.”

Issue(s) to be Decided

Is this living accommodation excluded by s. 4(c), above? If not, has the tenant been wrongfully forced from the accommodation, incurring damages? Has she been verbally abused so as to entitle her to recover damages?

Background and Evidence

The contractual relationship between the parties started December 1, 2018. They had known each other in passing. The landlord is the owner of this three bedroom home. She had been living there with her husband who, unfortunately, had been relocated to a care facility as the result of dementia. The tenant had made it known her tenancy was expiring where she was. The parties agreed to have the tenant come live in the home.

In November 2018 they signed a standard form residential tenancy agreement to commence December 1, 2018 at a monthly rent of \$500.00. The tenant paid a \$250.00 security deposit which the landlord still holds.

The home consists of one bedroom on the main floor and two bedrooms on the upper floor. On the main floor, in addition to a bedroom, is a large room (perhaps a family room) and a "half bath" room composed of a sink and toilet. On entering the front door one is met with these areas as well as a stairway to the upper floor. On the upper floor are two bedrooms, a living room, a kitchen and a full bathroom including a tub and shower. The landlord occupied one of the bedrooms and it has its own "en suite" bathroom. The parties agree they shared the washer and dryer located in the upstairs bathroom.

All seemed to go well with the arrangement until, in January 2019, while the tenant was away on vacation, the landlord rented out the second bedroom on the upper level to Mr. G.W. who commenced to share the upper bathroom. The tenant and Mr. G.W. did not get along.

On or about April 24, 2019 the landlord gave the tenant a typed paper purporting to end her tenancy on May 31. No reason was given. The tenant vacated by May 3. The landlord was served with the tenant's application on May 4 by one of the tenant's moving men. The tenant did not provide the landlord with a forwarding address in writing pursuant to s. 38 of the *Act* but relies on the address in her application as a forwarding address.

The tenant testified that when she moved in the place was partially furnished. She converted the family room area into a semi kitchen by installing a hot plate, bar fridge or mini fridge and using a plastic laundry sink as a kitchen sink. She says she only used the upstairs kitchen if she had been invited upstairs to dine with the landlord. She used

the upstairs bathroom to bathe or shower but she thinks the landlord did not use that facility as she had her own en suite bathroom.

The tenant testified about the loud and aggressive nature of Mr. G.W. and she opined on his psychological status. His manner caused a recurrence of her PTSD resulting in medication costs she seeks to recover. She explained how the landlord slammed a door one day, damaging a stained glass item. She was also concerned that the landlord was visiting her, uninvited, too often.

Mr. C.W. testified for the tenant and stated that the tenant was desperate to leave this accommodation at the end of April and so he let her move in with him.

The landlord testified saying that the tenant was entitled to use the kitchen area and did use it. She says that the upstairs bathroom was always to be shared and, indeed, she supplied that bathroom with toilet paper. She used that bathroom herself when she was doing laundry (located in the same room).

Analysis

I find that this accommodation was of a type excluded by s. 4(c) of the *Act* and so this dispute resolution mechanism is not available to the tenant to pursue her claims. She must seek recourse elsewhere.

The existence of a tenancy agreement adopting the *Act* is a strong indicator that the parties intended the *Act* to apply to their relationship. It is not however, conclusive. I find that the parties were unaware of the statutory exclusion when they used the standard residential tenancy agreement to form the contract between them and so the document cannot be considered to be evidence of a mutual intention to forego the statutory exclusion.

It is clear that whether or not the tenant ever used the upstairs kitchen on her own, she was entitled to use it. It was to be shared. Her decision to create a partial kitchen in the lower area was not a requirement of the tenancy and was done by her unilaterally, without landlord knowledge or consent. Her doing so cannot change a homeowner sharing relationship into a formal landlord and tenant relationship.

The tenant was required to use the upstairs bathroom to bathe or shower. There is no evidence that she was given exclusive use of it as part of her tenancy. I consider it

most likely that it was a common area. Even if the landlord seldom used that bathroom, it remained a shared facility she was entitled to use.

Thus, this accommodation was one in which the tenant shared bathroom and kitchen facilities with the owner.

Conclusion

The tenant's application is dismissed without consideration of the substance of her claims. She is free to pursue them in the appropriate forum.

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: June 10, 2019

Residential Tenancy Branch