



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, for a monetary order for the return of the security deposit and for the filing fee. Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant was represented by his agent.

As both parties were in attendance I confirmed service of documents. The landlord confirmed receipt of the tenant's evidence and stated that he had not filed any of his own evidence. I find that the landlord was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

The tenancy started in September 2016 and ended on June 20, 2018. The monthly rent was \$850.00 payable on the first of each month. The rental unit consists of a room in the basement of a home that is occupied by the landlord and his family. The landlord is also the owner of the home.

The landlord testified that the upper level of the home contains 3 bedrooms which are occupied by the landlord's brother, his mother and a paying tenant. The lower level contains two bedrooms and a washroom. The landlord occupies one room and the other was rented out to this tenant. The landlord testified that the washroom was shared and if the tenant wanted to use a kitchen, he had to use the kitchen located on the upper floor. The landlord confirmed that he was a co-owner of the property and was on title.

The tenant argued that he did not rent the washroom. He stated that the tenancy agreement mentioned a room as the rental unit and did not make reference to a washroom. However the tenant did agree that he used and shared the washroom with the landlord.

Analysis

Section 4 of the *Residential Tenancy Act*, addresses what the *Act* does not apply to. It states that the *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation

Based on the above facts I find that the tenant rented a room in the home of the owner/landlord and shared the kitchen and washroom with the owner/landlord.

The circumstances of the dispute do not fall within the jurisdiction of the *Act*, and the application must therefore be dismissed. The tenant is at liberty to pursue other remedies under common law.

Conclusion

The tenant's application is dismissed.

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 13, 2019

Residential Tenancy Branch