



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

The tenant applies to recover a \$350.00 security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “*Act*”). The landlord claims the rental accommodation is exempt from the application of the *Act* because it is accommodation in which bathroom or cooking facilities are shared with the owner.

The listed 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.

Issue(s) to be Decided

Is this accommodation exempt under from the application of the *Act*? If not, has the s. 38 doubling penalty been engaged in this case?

Background and Evidence

Mr. McP., who was not named as a respondent, is the sole registered owner of this accommodation. The named respondent Ms. M.S. is his long-time common law wife.

The home is of three levels. On the ground floor there are three bedrooms, a kitchen and a full bathroom. On the second level there are an undisclosed number of bedrooms, a kitchen and a full bathroom. On the top level there are four bedrooms and a bathroom. One of the bedrooms on the top level is reserved by the landlord and has its own en suite bathroom with Jacuzzi.

The tenant, a student, moved in December 2018. She gave the landlord a cheque for \$1050.00 being \$700.00 for a month's rent and \$350.00 as a security deposit for a "room" on the top floor. She did not know the other two people renting rooms on that floor, nor the people renting rooms on the bottom floor.

She says that she shares her bathroom with the other tenants.

Ms. M.S. testifies that the landlord uses the tenant's bathroom on the top floor because it has a tub and shower, while the en suite bathroom only has the Jacuzzi and shower. She notes that the landlord uses a downstairs freezer also used by the tenants. She feels it is all one house. She was the main renting agent with this tenant. She says tenant didn't give adequate notice to end the tenancy and so should forfeit the deposit money. She says the tenant didn't leave the premises clean and returned the key very late. She says she never got a forwarding address in writing from the tenant.

Mr. D.McP. testifies that he is the sole registered owner. While he spends significant time away, this house is his principal residence. It is presently houses himself, Ms. M.S. and four young grandchildren who have been there for a few months. He refers to the en suite bathroom as "our" bathroom. He indicates that they have four or five student tenants when full. He candidly states that he and Ms. M.S. have their own kitchen and bathroom and that the tenants have their own kitchen and bathroom.

Analysis

Section 4 of the *Act* provides that its provisions regarding landlords and tenants, its mandatory tenancy agreement terms and its dispute resolution methods do not apply if the living accommodation in question is "living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation."

The landlord has presented an earlier decision, from May 2017, in which a bedroom in the bottom level of the home was excluded from the application of the *Act*. In that case

the arbitrator determined that the parties did share cooking and bathroom facilities with the landlords and particularly that they shared a freezer located in the bottom level.

On the evidence presented in this case I find I must conclude on a balance of probabilities that this tenant did not share cooking or bathroom facilities with the owner. I base this conclusion on the fact that the owner, Mr. McP, testifies to that effect.

Whether or not the landlords are still using a part of a freezer on the bottom level, there is no evidence this tenant was using it or sharing it. In any event, the sharing of only a freezer is not, in my view, consonant with the idea of sharing “cooking facilities.”

I find that the *Act* does apply to this tenancy; the relationship is not exempt under s. 4.

The tenant ended in mid-February 2019. The tenant did not immediately provide a forwarding address, but she did provide one when she gave the landlord this application. The landlord had that address by, at the latest, April 17, 2019; the date the landlord filed material in opposition to the claim.

Section 38 of the *Act* provides that once a tenancy has ended and once the landlord has the tenant’s forwarding address in writing, the landlord has a fifteen day window to either repay the deposit money or to make an application to keep all or a part of it against an obligation owed by the tenant. If a landlord fails to meet that fifteen day time limit, she may still apply against the tenant, but must account to the tenant for double the amount of the deposit money.

The tenant ended in mid-February 2019. The tenant did not immediately provide a forwarding address in writing, but she did provide one when she gave the landlord this application. The landlord had the application and thus the tenant’s written address by, at the latest, April 17, 2019; the date the landlord filed material in opposition to the claim.

The landlord Ms. M.S. advanced a number of complaints at this hearing, particularly that the tenant did not give sufficient notice to end the tenancy and didn’t leave the place reasonably clean. As stated at the hearing, I cannot deal with such claims unless and until the landlord makes her own application for dispute resolution. She is free to do so subject to any applicable limitation period.

In the meantime the tenant is entitled to recover the \$350.00 security deposit. As well, I am satisfied that the landlord has failed to comply with the fifteen day period set by s. 38, above, and must account to the tenant for double the deposit.

Conclusion

The tenant is awarded \$700.00. She will have a monetary order against the respondent Ms. M.S. in that amount.

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: July 08, 2019

Residential Tenancy Branch