



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 tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of the tenants' security deposit, pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 48 minutes.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The landlord stated that she did not serve her written evidence package to the tenants. The tenants claimed that they did not receive it. I notified both parties that I could not consider the landlord's evidence package at the hearing or in my decision, as it was not served to the tenants, as required.

Preliminary Issue – Jurisdiction to hear Matter

At the outset of the hearing, the landlord raised the issue of jurisdiction, claiming that this tenancy was not governed by the *Act*, because it was excluded by section 4(c). The landlord stated that she, as the owner of the rental unit, shared a kitchen and bathroom with the tenants during this tenancy. The tenants disputed that this tenancy was excluded by the *Act*, claiming that they did not share a kitchen or bathroom with the landlord.

The landlord confirmed that she is the owner of the rental unit, which is a townhouse. She said that she occupied the master bedroom inside the rental unit, while the tenants were renting the other two bedrooms. She said that in 2016, one of the two tenants shared the rental unit with her, so this was the same arrangement, except another tenant was joining this time. She claimed that her belongings were inside the rental unit during this tenancy. The landlord confirmed that she agreed to rent each bedroom to each tenant for \$850.00 each, beginning on May 1, 2019, and that she would never rent the entire townhouse to the tenants for \$1,700.00 total. She said that the tenants moved out on May 5, 2019, because they did not want to share the rental unit with her. She claimed that she offered the entire rental unit to the tenants for \$2,300.00 total, which they refused. The tenants claimed that the landlord made the above offer because she was not living there.

The landlord explained that she used the kitchen and bathroom during the tenancy, on May 3, 2019, when she let herself into the rental unit with her own keys. She said that the tenants were not there at that time. She stated that she returned to the rental unit on May 4, 2019, and expected the tenants to return a signed tenancy agreement to her but they locked her out of the unit so she called the police. She said that the police allowed her access into the unit because she was entitled to be there.

The tenants dispute that the landlord shared the kitchen and bathroom with them. They maintained that the landlord lives a block away from the rental unit in another place. The landlord disputed this, stating that she stays with her boyfriend and mother on occasion, but her residence is at the rental unit. The tenants stated that when they moved into the rental unit, the landlord's belongings were there, but it was in storage in the master bedroom and the garage. The tenants claimed that they were not told by the landlord that she would be sharing the rental unit or storing her belongings there. They said that the landlord does not even have a bed inside the master bedroom. They explained that they moved out of the rental unit because they did not want to share it

with the landlord, so they served her with a breach notice. They said that they called the police because the landlord entered the rental unit without notice or permission. They agreed that one of the two tenants shared the rental unit with the landlord in 2016, but that was not the case now, as the two tenants wanted to live alone without the landlord.

Analysis

Section 4(c) of the *Act*, outlines a tenancy in which the *Act* does not apply:

*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...*

It is undisputed that the landlord owns the rental unit. I find that the landlord proved, on a balance of probabilities, that she shared the same kitchen and bathroom with the tenants during this tenancy.

I find that the landlord is not required to live at the rental unit in order to share the kitchen and bathroom with the tenants. The landlord accessed the rental unit with her keys to use the kitchen and bathroom on May 3, 2019. I find that the landlord is not required to be cooking at the same time as the tenants, sharing meals with them, or in the kitchen at the same time as them. I also find that the landlord is not required to be using the bathroom at the same time as the tenants.

I accept the landlord's testimony that she used the kitchen and bathroom in the rental unit, which were shared spaces with the tenants. Even if the landlord stayed at other residences during this tenancy, she was still using the kitchen and bathroom at the rental unit, and had her belongings there as acknowledged by both parties.

I further find that the tenants moved out of the rental unit because they did not want to share the same space with the landlord, as per their own testimony. They agreed that the landlord offered the entire rental unit to them for \$2,300.00, since they were only using two rooms at \$1,700.00, during their tenancy.

The *Act* specifically excludes the owner of a rental unit who shares a kitchen and bathroom with the tenants. Accordingly, I find that I am without jurisdiction to consider the tenants' application because it is excluded by section 4(c) of the *Act*.

For the above reasons, I find that this is not a matter within the jurisdiction of the Residential Tenancy Branch. Accordingly, I decline jurisdiction over the tenants' application.

Conclusion

I decline jurisdiction over the tenants' application.

I make no determination on the merits of the tenants' application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent 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: September 04, 2019

Residential Tenancy Branch