



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT OPT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to recover his filing fee for this application from the landlord pursuant to section 72; and
- an Order of Possession of the rental unit pursuant to section 54.

The tenant was represented by counsel, AK, this hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution ('applications'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed, I find that these documents were duly served in accordance with section 88 of the *Act*.

At the outset of the hearing, it came to my attention that a separate application related to this same tenancy was scheduled for a future date. I had informed both parties that this additional matter may be dealt with by mutual consent of both parties. After discussing the matter with both parties, and as both parties did not mutually consent to deal with this future hearing in conjunction with this matter, the future hearing was not dealt with.

Preliminary Matter: Does the Residential Tenancy Branch have jurisdiction to hear the dispute between the parties?

The tenant has filed an application for an Order of Possession of the home that she is renting. The tenant moved in on December 1, 2017. The tenant is still residing at the rental address, but the tenant testified that the landlord had moved in on September 8, 2019, and as a result, the tenant no longer has full and peaceful possession of the

portion of the home which she pays rent for. The tenant currently pays \$650.00 in monthly rent to the landlord. The tenant feels that the landlord has been dishonest in their written and oral testimony, as well as the landlord's actions, in order to mislead and evade the landlord's obligations under the *Act*.

The landlord testified that the dispute does not fall under the jurisdiction of the Residential Tenancy Branch as the tenant shares the 2 bedroom home with the landlord, including the kitchen and bathroom. The landlord testified in the hearing that the tenant was rented a room in the home, with use of the common areas such as the kitchen and bathroom. The landlord testified that she still had exclusive use of the second bedroom, but was not sleeping there as she was taking care of her mother, who resides at another address. The landlord submitted a copy of the "Roomer / Landlord Agreement" which names the two parties and was signed and dated by both parties on November 5, 2017. There are terms in the contract which provide, in part:

"This form applies if a roomer is living with a homeowner or a member of the homeowner's immediate family, and sharing a kitchen and bathroom with the homeowner."

"The landlord agrees to rent to the Roomer and the Roomer agrees to rent from the Landlord accommodations at the following address:..."

"The Roomer agrees to use the rented accommodations as a residential dwelling and for no other purpose, and to abide by the covenants, rules, and regulations of this agreement. The roomer cannot interfere with the landlord's reasonable enjoyment of the property. "

"The common areas that may be used by the Roomer (eg. Bathroom/kitchen/living room) are: Kitchen, washroom, dining room and laundry room."

"The roomer will use the rental accommodations starting Dec 1st to January 31st 2017-2018."

"Description of Room(s) Being Rented: One rear bedroom on ground floor."

Analysis

Section 4(c) of the *Act* reads in part as follows:

- 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,...

I have considered the testimony and evidence of both parties. I find that the “Roomer / Landlord Agreement” to be valid as it was signed by both parties on November 5, 2017 before the applicant had moved in. I find the Agreement clearly references the kitchen and bathroom as “common areas” and designates one of the bedrooms for the applicant’s exclusive use.

In accordance with the signed Agreement, I find that the landlord retained the right to occupy and use the home, particularly the other bedroom and listed common areas.

Under these circumstances and based on the evidence before me, I find that the *Residential Tenancy Act* does not apply. I therefore have no jurisdiction to render a decision in this matter.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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: October 2, 2019

Residential Tenancy Branch