



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the Applicant's Application for Dispute Resolution, made on June 17, 2019 (the "Application"). The Applicant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Respondents return all or part of the security deposit.

The Applicant, the Applicant's Representative, and the Respondents attended the hearing at the appointed date and time and provided affirmed testimony.

The Applicant testified the Application and documentary evidence package was served to the Respondents by Canada Post registered mail on June 21, 2019. The Respondents confirmed receipt. The Respondents testified that they served the Applicant with their documentary evidence by Canada Post registered mail on August 11, 2019. The Applicant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

At the start of the hearing, the Respondents indicated that the Residential Tenancy Act does not apply to the shared living accommodation between the parties. The Applicant stated that she rented a room in a home with four other students. The Applicant stated that she entered into an agreement with the Respondents which indicated that the Applicant would pay rent for a room in the rental house. The Applicant stated that the agreement also indicated that all other areas were common areas shared by the other occupants as well as the Respondents who are the owners of the rental house.

The Applicant stated that the Respondents have a workshop in the basement of the rental house which can be accessible from a door in the basement. The Applicant stated that the Respondents choose to come through the house in order to gain entry to the workshop. The Applicant stated that she has never seen the Respondents use any other areas of the rental house including the kitchen and washrooms. The Applicant stated that the Respondents live next door to the rental house and have access to their own kitchen and washroom if need be. The Applicant stated that the Residential Tenancy Act should apply to their living situation.

In response, the Respondents stated that they were very clear with the Applicant before she moved into the rental house that aside from the bedrooms, all other areas in the home are considered common areas and are shared amongst the Respondents and occupants of the rental house. The Respondents stated that the door leading to the workshop in the basement is an old heritage door and does not open from the exterior, which is why they require to go through the rental house to access the workshop. The Respondents stated that they use the workshop mostly when the occupants are out at school as they try to respect their privacy.

The Respondents stated that they use the kitchen and washroom facilities throughout the day while working in the workshop. Furthermore, the Respondents stated that they are responsible for cleaning the common areas and decorate the common areas for special holidays. The Respondents stated that the shared living situation is made very clear to each occupant in the house and that the Applicant agreed to the terms upon moving into the rental house. The Respondents stated that the Residential Tenancy Act does not apply to this shared living situation.

Section 4(c) of the *Act* confirms that the *Act* does not apply to living accommodation in which the owner shares bathroom or kitchen facilities with the Respondent. In this case, the Applicant testified that she entered into an agreement with the owners of the rental house which stipulated that aside from the bedrooms, all other areas of the rental home are considered shared common areas amongst the other occupant as well as the owners of the rental home.

While the Applicant stated that she has never seen the Respondents use the kitchen or washroom, I accept that the Respondents typically use the common areas of the rental house while the occupants are away at school to respect their privacy. I find it reasonable to expect that while the Respondents regularly use their workshop, they may also use the kitchen and washroom at their convenience. Furthermore, I find that the *Act* does not stipulate how often the kitchen and bathroom must be used by the owner to qualify as shared kitchen and bathroom facilities.

Accordingly, pursuant to section 4(c) of the *Act*, I find the *Act* does not apply to the agreement between the parties. The Application for Dispute Resolution is dismissed without leave to reapply.

Conclusion

I decline to proceed due to a lack of jurisdiction, and the Application is dismissed without leave to reapply. The Applicant should seek legal advice from their lawyer as to how to resolve this dispute.

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