



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL/ MNSD, FFT

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- a Monetary Order for damage or compensation under the Act, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant, landlord J.D. and her agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that they were each personally served with the other's application for dispute resolution. I find that both applications for dispute resolution were served in accordance with section 89 of the *Act*.

Preliminary Issue- Jurisdiction

Both parties agreed that the tenant rented a room in a house in which the landlords live and that the tenant and landlords shared a kitchen.

In the hearing I informed both parties that section 4(c) of the *Act* states that this *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. I informed both parties that pursuant to section 4(c) of the *Act*, I do not have jurisdiction to hear this matter.

After I informed both parties that I do not have jurisdiction to hear this matter, the agent for the landlord testified that there is a partition in the kitchen and that the tenant had the use of his own stove but still had access to the rest of the landlord's side of the kitchen.

I find that, for the purposes of this *Act*, the tenant and the landlords shared a kitchen as the kitchen areas were not separate entities of which either party had exclusive use. Therefore, pursuant to section 4(c) of the *Act*, I find that I do not have jurisdiction to hear this matter.

Conclusion

I dismiss the applications without leave to reapply.

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 03, 2019

Residential Tenancy Branch