



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL FFT MT OPL FFL

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- an Order of Possession pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- More time to file their application pursuant to section 66;
- Cancellation of the landlord’s Notice to End Tenancy for Landlord’s Use (the “2 Month Notice”) pursuant to section 49; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing with family members assisting and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue to be Decided

Is this matter within the jurisdiction of the *Residential Tenancy Act*?

Background and Evidence

The parties provided the following undisputed evidence. The landlord is the owner of the rental property. The rental unit is a basement suite in a detached home. The landlord resides in the main floor of the rental building.

The tenant moved into the rental unit in July, 2010. Since that time the tenant has been free to access the landlord's suite and use the bathroom and kitchen facilities on the main floor. The tenant also testified that the landlord was free to access the basement suite and the facilities therein during the duration of the tenancy. The parties gave evidence that even after their personal relationship took a downwards turn in or about 2016 the tenant was given continued access to the facilities on the main floor.

Analysis

Section 4(c) of the *Act* provides that:

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,

Based on the undisputed evidence of the parties I find that the tenant had free access to the bathroom and kitchen facilities in the landlord's suite. I find that this was an open invitation to share the facilities and not limited to those instances when the landlord specifically allowed access. I further accept the evidence of the tenant that the landlord was free to utilize the facilities located in the basement suite.

Regardless of the nature of the relationship between the parties, a matter on which I make no finding, I find that this was a living accommodation where the bathroom and kitchen facilities were shared between the tenant and the owner of the property. As such, I find that the *Act* does not apply to this living arrangement between the parties. 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 8, 2019

Residential Tenancy Branch