



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) to dispute a rent increase from the landlord, pursuant to section 42.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. The tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

The tenants testified that they sent their application for dispute resolution to the landlord via registered mail on August 26, 2019 and that it was unclaimed and returned to sender. The tenants provided the Canada Post Tracking number verbally in the hearing to confirm this registered mailing. The tracking number is located on the cover page of this decision. I find that the landlord was deemed served with the tenants' application for dispute resolution on August 31, 2019, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue- Jurisdiction

The tenants testified to the following facts. The tenants rent one bedroom in a two-bedroom house from the landlord. The landlord keeps the second bedroom for himself,

but this second bedroom is not his primary residence and he only stays in it a few times per year. The house only has one kitchen and when the landlord stays in the second bedroom, he shares the kitchen with the tenants.

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 find that pursuant to section 4(c) of the *Act*, I do not have jurisdiction to hear this matter because the landlord and tenant share kitchen facilities. I find that the *Act* does not require the shared kitchen facilities to be the landlord's primary residence as the wording is considerably broader. The *Act* only states that the *Act* does not apply if the owner and tenant share a kitchen or bathroom, it does not state a minimum threshold for the duration or frequency of shared facilities, for this *Act* to not apply. Therefore, since the tenants and the landlord share kitchen facilities and the landlord can use the kitchen at any time he chooses, I find that the *Act* does not apply and that I do not have jurisdiction to hear this matter.

Conclusion

I dismiss the tenant's application without leave to reapply for lack of 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: October 11, 2019

Residential Tenancy Branch