



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC, PS, RR, AAT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for an Order requiring the Landlord to provide services; for an Order requiring the Landlord to allow access to the rental unit; for an Order requiring the Landlord to comply with the tenancy agreement and the *Residential Tenancy Act (Act)*; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant submitted an Amendment to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order and to amend the name of the Applicant.

The Tenant stated that on August 01, 2019 the Application for Dispute Resolution package and the Amendment to the Application for Dispute Resolution were left in the Landlord's mail box. The Landlord stated that these documents were received on August 23, 2019.

On October 10, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was mailed to the rental unit after the Tenant had vacated the unit. The Tenant did not receive this evidence. As the evidence was not served to the Tenant in accordance with section 88 of the *Act*, and the Tenant did not receive the evidence, it was not accepted as evidence for these proceedings.

Issue(s) to be Decided

Is there a need to issue an Order requiring the Landlord to provide services?

Is there a need to issue an Order requiring the Landlord to allow access to the rental unit?

Is there a need to issue an Order requiring the Landlord to comply with the tenancy agreement and the *Residential Tenancy Act (Act)*?

Is the Tenant entitled to a rent reduction and/or a monetary Order?

Background and Evidence

The Landlord and the Tenant agree that:

- the Tenant lived in the lower portion of the residential complex;
- one other tenant lived in the lower portion of the residential complex;
- a third tenant lived in the upper portion of the residential complex;
- the Landlord lived in the upper portion of the residential complex;
- there were hot plates and a fridge in the lower portion of the residential complex;
- there is a kitchen in the upper portion of the residential complex; and
- the Landlord and the third tenant used the kitchen in the upper portion of the residential complex.

The Landlord stated that:

- she is a partial owner of the residential complex; and
- all tenants were permitted to use the kitchen in the upper portion of the residential complex if they wished to cook something that could not be cooked on a hotplate.

The Tenant initially stated that he would not use the kitchen in the upper portion of the residential complex. He subsequently stated that he was not permitted to use the kitchen in the upper portion of the residential complex.

The Witness for the Landlord stated that:

- he lived in the lower portion of the residential complex at the same time as the Tenant lived in the complex;
- all tenants living in the unit were permitted to use the kitchen in the upper portion of the residential complex; and
- on occasion he used the refrigerator and made coffee in the upper portion of the complex.

The Tenant stated that the Witness for the Landlord is not to be believed because he “always has her back”.

Analysis

Before considering the merits of the Application for Dispute Resolution I must determine whether this application has jurisdiction under the *Act*.

Section 4(c) of the *Act* stipulates that the *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

On the basis of the undisputed evidence I find that the Landlord is a partial owner of the residential complex.

I favour the testimony of the Landlord, who stated that the Tenant had the use of the kitchen in the residential complex, over the testimony of the Tenant, who stated that he was not permitted to use the kitchen facilities. I favoured the testimony of the Tenant because it was corroborated by the testimony of the Witness for the Landlord, who stated that he is a tenant in the rental unit and that all tenants have use of the kitchen on the upper floor.

In adjudicating this matter I have placed little weight on the Tenant’s submission that the Witness for the Landlord has a close relationship with the Landlord. Even if this were true, it does not establish that the Witness for the Landlord was not being truthful.

As the Tenant had the option of sharing the kitchen with the Landlord and the Landlord is a part owner of the residential complex, I find that the *Act* does not apply to this tenancy, pursuant to section 4(c) of the *Act*. I find that the *Act* does not apply even if the Tenant opted to not use the kitchen that was available to him, as it was included with the tenancy.

As the *Act* does not apply to this tenancy, I must dismiss this Application for Dispute Resolution.

Conclusion

I do not have jurisdiction in this matter and I therefore dismiss the Application for Dispute Resolution.

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 15, 2019

Residential Tenancy Branch