



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT OPT

Introduction

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

- an Order of Possession, pursuant to section 54 of the *Act*; and
- recovery of the filing fee from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant attended with R.S. acting as his agent and are herein collectively referred to as "the applicant". The landlord attended with his son A.B. acting as his agent and are herein collectively referred to as "the respondent".

As both parties were present, service of documents was confirmed. The respondent confirmed receipt of the applicant's Notice of Dispute Resolution Proceeding package and documentary evidence, however the respondent disputed receipt of a USB drive with digital evidence. The applicant confirmed receipt of the respondent's evidence.

Rule 3.10.1 of the Residential Tenancy Branch Rules of Procedure sets out the requirements for digital evidence relied upon at a hearing, as follows:

To ensure a fair, efficient and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute Access Site, directly to the Residential Tenancy Branch or through a Service BC Office, and be served on each respondent.

A party submitting digital evidence must:

- *include with the digital evidence:*
 - *a description of the evidence;*
 - *identification of photographs, such as a logical number system and*
 - *description;*
 - *a description of the contents of each digital file;*
 - *a time code for the key point in each audio or video recording; and*
 - *a statement as to the significance of each digital file;*
- *submit the digital evidence through the Online Application for Dispute Resolution system under 3.10.2, or directly to the Residential Tenancy Branch or a Service BC Office under 3.10.3; and*
- *serve the digital evidence on each respondent in accordance with 3.10.4.*

Rule 3.10.3 further requires that:

Parties who submit digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must provide the information required under Rule 3.10.1 using Digital Evidence Details (form RTB-43).

As the applicant failed to complete and submit a Digital Evidence Details form (#RTB-43) as required by the Rules of Procedure, I have not considered the applicant's digital evidence in this matter.

Based on the undisputed testimonies of the parties, I find that the notice of this hearing and only the documentary evidence for this matter were served in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Amendment of Applicant's Application

At the outset of the hearing, the applicant clarified that the rental unit number pertaining to this dispute was "BSMT #2". As such, pursuant to my authority under section 64(3)(c) of the *Act*, I amended the applicant's Application to provide the correct unit number for the dispute address.

Issue(s) to be Decided

Is the applicant entitled to an Order of Possession of the rental unit?

Is the applicant entitled to recover the cost of the filing fee from the respondent?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

There was no written tenancy agreement between the parties pertaining to the dispute address for this matter. Both parties confirmed that there had been a previous verbal tenancy agreement between the parties in relation to another basement rental unit contained in the residential property, herein referred to as BSMT #1.

The applicant claimed that he had a verbal tenancy agreement with the respondent pertaining to the dispute address (BSMT #2). The respondent denied that there had been any verbal tenancy agreement between the parties pertaining to the dispute address as the respondent claimed that the dispute address (BSMT #2) was located in their home and was not a separated rental unit, but rather it was openly accessible from the upper level of the house and was for their personal use. The respondent testified that they had access to and made use of the bathroom and kitchen located in BSMT #2. The applicant disputed this and claimed that there was a door separating BSMT #2 from the rest of the house. The applicant called on his friend and former roommate, with whom he had resided with in BSMT #1, who provided witness testimony that he had been in BSMT #2 and that there was a door separating the unit from access to the rest of the house.

The respondent called on two contractors who had worked on the construction of the kitchen in BSMT #2, who provided witness testimony that there was no door separating the unit from access to the rest of the house.

Analysis

Section 4(c) of the *Act* reads in part as follows:

This Act does not apply to...

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,...

Therefore, before considering any other matters in relation to the applicant's claims, the preliminary issue that I must consider is whether or not the living accommodation pertaining to this dispute falls under the jurisdiction of the *Act*.

In this matter, the respondent has testified that they own the house, within which the living accommodation which is the subject of this dispute, is located. Further, the respondent has claimed that they have access to and use the bathroom and kitchen facilities in that unit as it is not separated from their living area.

The applicant disputed the respondent's testimony and claimed that the living accommodation is separated from the respondent's house by a door.

Both parties called on witnesses to confirm their version of the circumstances in this matter. Neither party submitted any documentary evidence that showed the existence of a door, or lack thereof, separating the disputed living accommodation area from the rest of the house.

Rule 6.6 of the Rules of Procedure sets out that the standard of proof in a dispute resolution hearing is on a balance of probabilities, and that the onus for proving their case is on the party making the application. Therefore, in this matter, the applicant must prove their claim on a balance of probabilities that the dispute address living accommodation falls within the jurisdiction of the *Act*, which requires that the kitchen or bathroom is not shared with the owner of the accommodation, as is claimed by the respondent.

Where one party provides a version of circumstances in one way, and the other party provides an equally probable version of circumstances in another way, without further evidence, the party with the burden of proof has not met the onus to prove their version of the circumstances.

Based on the testimony and evidence presented, on a balance of probabilities, I find that the applicant has failed to establish that neither the kitchen nor the bathroom of the living accommodation under dispute are shared with the respondent. Therefore, I find that the applicant has not met the burden to prove that the living accommodation under dispute falls within the jurisdiction of the *Act*.

As such, I find that pursuant to section 4 of the *Act*, the *Act* does not apply to this living accommodation. Therefore, I have no jurisdiction to render a decision in this matter.

As the applicant was unsuccessful in his claim, he must bear the costs of the filing fee.

Conclusion

The application for dispute resolution is declined as I have no jurisdiction to consider this application pursuant to section 4 of the *Act*.

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 25, 2019

Residential Tenancy Branch