



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNDCT MNSD RPP

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- Authorization to recover the filing fee from the respondent pursuant to section 72;
- A monetary award for damages and loss pursuant to section 67;
- A return of the deposit for this tenancy pursuant to section 65; and
- A return of personal property pursuant to section 65.

Both parties attended the hearing 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 was confirmed. The parties each testified that they had been served with the other’s 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*.

Issue(s) 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 named respondent is the owner of the rental property. The rental unit is a Den in a 1-Bedroom apartment. The apartment contains one kitchen and 1.5 bathrooms. The respondent resided in the rental property at all times during this tenancy.

The applicant moved into the rental unit in May 2019. Monthly rent was \$800.00 payable on the last day of the month. The rental unit included a microwave and mini refrigerator for the applicant's use.

The applicant submits that they had exclusive use of one of the bathrooms in the suite and did not use the kitchen as they simply stored prepared food in their mini refrigerator and heated it up in the microwave using disposable cutlery and utensils.

The respondent submits that the applicant shared the use of the kitchen and bathroom in the property. The respondent says that there was only one shower in the property and it was shared by the parties. The respondent gave evidence that the applicant regularly used the shared kitchen to store and cook food. The respondent submitted into evidence a floor plan for the suite showing that there is only 1 full bathroom in the unit.

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 evidence of the parties I find that the applicant and the respondent, the owner of the property, shared the use of the bathroom and kitchen facilities. I do not find the applicant's testimony that they limited their use of the kitchen or that the respondent did not utilize the bathroom to have an air of reality. In a 1-Bedroom suite with a single full bathroom it is reasonable to conclude that both parties would use that bathroom. While the landlord may have had access to a second ensuite bathroom, based on the evidence provided, it appears that it is not a full bathroom.

I find that this was a living accommodation where the bathroom and kitchen facilities were shared between the applicant and the respondent, who is 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: November 19, 2019

Residential Tenancy Branch