



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, OLC

Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*;
- an Order for the landlord to comply with the *Act*, regulation, and or the tenancy agreement, pursuant to section 62(3) of the *Act*; and
- authorization to recover the filing fee for this application, pursuant to section 72 of the *Act*.

All parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, and make submissions. The landlord testified that he did not receive a complete Notice of Hearing and Application for Dispute Resolution package from the tenant. Since the landlord attended the hearing and submitted evidence for the hearing, I find that the landlord was sufficiently served pursuant to section 71(2)(c) of the *Act*.

Based on the testimonies of the parties I find that both parties' evidence packages were served on the other in accordance with section 88 of the *Act*.

Preliminary Issue – Jurisdiction

The parties agreed that the Applicants (landlords' parents) rented a one-bedroom basement suite from the Respondents on a fixed term basis which reverted to a month to month starting May 1, 2018 at a monthly rent of \$918.00 per month. There was no written tenancy agreement between the parties. The landlord and his spouse are the owners and reside in the upper portion of the property. The property was listed for sale and the parties are disputing monetary claims for renovations undertaken in the basement suite by the applicants since they moved into the property.

Analysis

The Residential Tenancy *Act* defines a tenancy agreement as:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit;

Section 4 of the *Act* provides that the *Act* does not apply to living accommodation in which the tenant shares a bathroom or kitchen facility with the landlord.

What this Act does not apply to

4 This Act does not apply to

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,
- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes,

The Applicant St.R. testified that on occasions his grandson would use the washroom facilities adjoining the one-bedroom suite. The landlord testified that the washroom was shared between family members and guests that visited the property.

I find that on a balance of probabilities the members of the family shared facilities in the rental property including the sharing of the adjoining downstairs washroom.

I find that the intention between the parties was to apportion the costs in relation to the renovations in the downstairs bedroom suite once the property was sold. This was an

arrangement between family members. I find no landlord-tenant relationship exists between the parties that would give rise to obligations on either part of the *Act*.

Consequently, pursuant to section 4(c) of the *Act*, I find I have no jurisdiction to consider the present application.

Conclusion

I find that I do not have jurisdiction in this matter, and I decline to make a finding on the merits of 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: December 20, 2019

Residential Tenancy Branch