



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the applicant seeking remedy under the Residential Tenancy Act (Act) for a monetary order for a return of her security deposit and to recover the cost of the filing fee.

The applicant, her assistant, and the respondent attended the teleconference hearing. The parties were affirmed and the hearing process was explained to the parties. The applicant and the respondent did not raise any concerns regarding the service of documentary evidence.

Issue(s) to be Decided

Does the Act apply to this dispute and do I have jurisdiction to decide this dispute?

If so, is the applicant entitled to monetary compensation and for recovery of her filing fee paid for this application?

Background and Evidence

The undisputed evidence is that the respondent is the owner of a three-bedroom condominium and that she rents out two of the bedrooms, reserving one of the bedrooms for her own use when she returns to the city.

Upon my inquiry, the respondent provided undisputed evidence that she lives out-of-province, but returns to the city often for business, for a total of 2-3 months each year, according to her testimony. Therefore, she keeps the third bedroom for herself.

The parties agreed that the applicant here signed a written tenancy agreement renting out bedroom, B, and to share the public space with the occupants of the other two bedrooms, with bedroom C being reserved for the respondent.

The parties provided a copy of the written tenancy agreement which shows that the respondent owns and lives in room C.

Analysis

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

In this case, the undisputed evidence shows that the respondent primarily lives in another province, but specifically reserved the use of part of the residential property so she could reside therein when she returned to town for her business.

I find the applicant does not have exclusive possession of the entire residential property; rather, she has exclusive possession of one room and otherwise has no reasonable expectation of privacy in the remainder of the property.

Although the tenant would not have had to share the residential property except for on a very limited basis, I find that she does not have exclusive possession of the property and that the respondent/owner has the right to access the property at any time.

In light of the above, I find that the living accommodation meets the above criteria for exclusion under section 4(c) of the Act, and I therefore decline to find jurisdiction to resolve this dispute.

The applicant is at liberty to seek the appropriate legal remedy to this dispute.

Conclusion

I find that this tenancy does not fall within the jurisdiction of the Act and I have declined 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: December 24, 2019

Residential Tenancy Branch