



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT**

Introduction

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

Authorization to recover the filing fee for this application from the respondent pursuant to section 72; and

A monetary order for damages or compensation pursuant to section 67.

Both the respondent and the applicant attended the hearing. As both parties were in attendance, service of documents was confirmed. The respondent confirmed receipt of the applicant's Application for Dispute Resolution Proceedings Package and evidence, the applicant confirmed receipt of the respondent's evidence, although she did not open the package. The applicant claimed she received the respondent's evidence on December 25, 2019, five days ago, but couldn't confirm the date. The respondent testified she sent the evidence package by registered mail on December 13, 2019 but could not confirm the tracking number. As the applicant acknowledged receiving the respondent's evidence but chose not to open it, I deem the applicant deemed served with the respondent's evidence in accordance with Rule 3.15 of the Residential Tenancy Branch Rules of Procedure.

Preliminary Issue

The applicant provided documentary evidence for this hearing to the Residential Tenancy Branch on December 30th, the day of the hearing. Rule 3.14 of the Residential Tenancy Branch Rules of Procedure states the evidence intended to be relied upon at the hearing must be received by the Residential Tenancy Branch not less than 14 days before the hearing. I determined the evidence was not new and relevant, unavailable to the applicant at the time the application was submitted and used my discretion to reject the tenant's late evidence.

Preliminary Issue

The applicant sought an adjournment so that I could have adequate time to review the late evidence provided to me the day of the hearing. I determined the adjournment arose from the applicant's own neglect and the applicant's request was denied.

Preliminary issue

The respondent testified her surname was misspelled by the applicant in the applicant's application. In accordance with rules 4.2 and 6.1 of the Residential Tenancy Act Rules of Procedure, I amended the respondent's surname. The respondent's correct name is reflected on the cover page of this decision.

Preliminary Issue

The respondent testified that she is the owner of the property in dispute, a single family home. The respondent referred me to 2017 and 2018 property tax notices for the property as proof of ownership.

The respondent/homeowner lives on the upper floor of the house and rents out a room on the lower floor. The applicant in this proceeding rented out the room and this rental includes the exclusive use of a bathroom not shared with the homeowner and a private sitting room. There are no separate cooking facilities located on the lower unit of the house. The parties shared a laundry facility, a hallway and a staircase leading to the homeowner's upper living area. The homeowner and the applicant shared the one and only kitchen in the house, with each party having one half the fridge. The applicant had exclusive use of a cupboard in the kitchen and a wooden island for food storage. Pots, pans, dishes, cutlery and kitchen appliances were also shared by the parties.

The applicant agreed during the hearing that this was the arrangement while she lived in the homeowner's house, but she stopped using the kitchen and started eating take-out food the month before she moved out of the house.

Analysis

The applicant did not dispute the respondent's evidence that she owns the home in which the parties shared a kitchen facility. The applicant acknowledged she shared the kitchen with the homeowner.

Section 4(c) of the *Act* states:

What this *Act* does not apply to

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,

Section 62 states:

Director's authority respecting dispute resolution proceedings

62 (1) The director has authority to determine

(a) disputes in relation to which the director has accepted an application for dispute resolution, and

(b) any matters related to that dispute that arise under this *Act* or a tenancy agreement.

As the parties agreed they shared a kitchen facility, I find that the *Residential Tenancy Act* does not apply to the living situation and I do not have the jurisdiction or authority to hear this matter pursuant to sections 4(3) and 62(1)(b) of the *Act*.

Conclusion

I decline to hear this matter further 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: December 30, 2019

Residential Tenancy Branch