



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 his security deposit and to recover the cost of the filing fee.

The applicant 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 his filing fee paid for this application?

Background and Evidence

The undisputed evidence is that the respondent is the owner of a five-bedroom home and that he rents out four of the bedrooms, reserving one of the bedrooms for his and his brother's own use when he returns to the city. One of the other bedrooms is rented by the applicant.

Upon my inquiry, the respondent provided undisputed evidence that he travels quite a bit and lives at the residential property one week every two months. He said that he has no other address. The respondent said his brother lives there more than he does.

The respondent provided utility bills for the residential property showing his name and the residential property address.

The applicant said the bedroom he rents is near the back of the suite and the respondent's bedroom is in the front of the suite. The applicant said he keeps his door closed and would not know when the respondent is in or out of the property.

The applicant said there is only one bathroom for the entire home.

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 travels, but specifically reserved the use of part of the residential property so he could reside therein when he returned to town.

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

I find that the applicant 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: January 28, 2020

Residential Tenancy Branch