



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT FFT

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. The landlord testified that he was unable to serve his evidence on the tenant as he was not in possession of the tenant's forwarding address. I provided an oral summary of the landlord's evidentiary materials during the hearing. The tenant testified that he took no issue with the admittance of the landlord's evidentiary materials. Accordingly, the landlord's evidentiary materials were admitted for the purposes of this hearing.

At the outset of the hearing, the landlord confirmed the spelling of his surname. As neither party was opposed, the landlord's name was amended to reflect the proper spelling of his name.

Preliminary Matter: Does the Residential Tenancy Branch have jurisdiction to hear the dispute between the parties?

Beginning in May of 2019 the tenant had rented a room from the landlord in this dispute. The tenant paid monthly rent in the amount of \$700.00, and a security deposit in the amount of \$350.00. The tenant moved out on July 31, 2019, and the landlord returned \$225.00 of the deposit to him.

The landlord testified that this tenancy does not fall under the jurisdiction of the RTB. The landlord testified that although he owns both sides of a side-by-side duplex, he shared a bathroom and kitchen with the tenant and other tenants as he did not have access to running water in the other side of the duplex. The landlord submitted utility bills for the tenant's side of the duplex, as well as an inspection report dated April 30, 2018 from the municipality. The report states that the main water line has to be established in the other side of the duplex, as well as a water meter, and water line to the City Main. The report also states that re-inspection is required to test all fixtures, valves, and test water temperature. The report also noted that a solid fuel burning appliance permit was required.

The landlord also submitted a building permit dated May 2, 2019 for the other duplex the landlord testified in the hearing that the other duplex still lacks the proper facilities, and therefore he shared the kitchen and bathroom in the the four bedroom duplex with the tenant and other tenants who rented rooms from him.

The tenant testified that the landlord did not reside with him and the other tenants, but in the other side of the duplex. The tenant testified that he had never actually witnessed the landlord using the kitchen and bathroom during his tenancy, although he was aware that the landlord would access the duplex, which the tenant believed to be in contravention of the *Act*. The landlord testified that he had rented out rooms to the tenants, and not exclusive use of the entire duplex. The landlord testified that the kitchen and bathrooms were shared amongst the tenants and himself.

The tenant submitted two letters from former tenants in the duplex. One of the former tenants resided there from April 2019 to June 2019. The tenant wrote that the tenants and landlord shared a porch in the side-by-side duplexes with separate entrances, and that he "noticed that [the landlord] would enter our living quarters unannounced and go downstairs (for reasons unknown) then exit with a quick "goodbye" as he stepped back out onto the porch". The tenant submitted photos which show a side-by-side duplex with a shared porch.

The other former tenant moved in July 1, 2019, and resided there for four months. The tenant also noted that the landlord would “enter the apartment without any notice or even knocking on the door. He lives in the house next door, and doesn’t use the apartment we rented for anything, including cooking, cleaning or using the bathroom or any other reason except to keep an eye on things.”

Analysis

Section 4(c) of the *Act* reads in part as follows:

- 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,...

I have considered the testimony and evidence of both parties. Although the testimony and statement of three of the former tenants noted how the landlord resided in the other duplex, it was noted by all three parties that the landlord would access to the duplex the tenants resided in. The three parties noted that during the tenancies they had observed the landlord entering and exiting the duplex, but never using the kitchen or bathroom facilities. The tenants believed that the landlord was accessing the duplex in contravention of the *Act* as he never gave notice that he would be doing so.

The landlord’s sworn testimony was that he had rented out rooms to the tenants, with the agreement that all the tenants and himself would share the kitchen and bathroom facilities. The landlord testified that only the bedrooms were designated for exclusive use of the tenants as he did not have access to running water in the other duplex, as supported by the documents submitted in evidence.

I find the documents to be valid, and support the landlord’s testimony that the other side of the duplex did not have the proper facilities to allow the landlord to fully utilize the kitchen and bathroom. I find the evidence to be sufficient to show that the landlord retained use of the kitchen and bathroom facilities in the tenant’s side of the duplex.

Although neither of the three tenants witnessed the landlord using the facilities, they did note that the landlord would enter and exit the duplex without notice. Although the tenants suspected that the landlord did this in contravention of the *Act*, I find the tenants’ allegations of a breach to be insufficiently supported by evidence.

I find it undisputed that all the tenants rented rooms in the duplex, and shared the common areas such as the kitchen and bathroom with each other. I find it further

undisputed that the landlord accessed the duplex during all three tenancies. I find that the landlord retained the right to use the kitchen and bathroom facilities in the tenant's side of the duplex as the other side of the duplex lacked running water.

Under these circumstances and based on the evidence before me, I find that the *Residential Tenancy Act* does not apply. 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: January 2, 2020

Residential Tenancy Branch