



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, OPR, OPC, MNRL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicant on December 16, 2019. The Applicant sought the following:

- Compensation for damage caused by the tenant to the unit or property;
- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent;
- An Order of Possession based on a One Month Notice to End Tenancy for Cause;
- To recover unpaid rent;
- To keep the security deposit; and
- Reimbursement for the filing fee.

The Applicant and Respondent appeared at the hearing.

The Respondent provided his full legal name which is reflected in the style of cause.

The Applicant submitted evidence prior to the hearing. The Respondent did not. I addressed service of the hearing package and Applicant's evidence and the Respondent confirmed receipt of these. The Applicant advised he had not served two items of evidence submitted late.

Preliminary Matters

Two preliminary matters arose at the hearing. First, I heard the parties on whether the RTB has jurisdiction to decide this matter given it is a room at the rental unit address. Second, the Respondent sought an adjournment of the hearing.

Adjournment

The Respondent sought an adjournment of the hearing on the basis that he had evidence he wanted to submit but could not. The Respondent said the evidence included photos of the rental unit address. The Respondent also said he wanted to subpoena witnesses for the hearing. The Respondent said he attended the RTB office and spoke to an Information Officer about submitting evidence. He said he had the evidence with him at the time. The Respondent said he asked the Information Officer about submitting evidence, but the Information Officer told him he should just pay his rent. The Respondent said he did not return to the RTB office or call the RTB again.

I had determined that I would hear the parties on the 10 Day Notice to End Tenancy for Unpaid Rent and unpaid rent but not the request for compensation for damage or the One Month Notice to End Tenancy for Cause. The request for compensation for damage is not sufficiently related to the 10 Day Notice to End Tenancy for Unpaid Rent. Further, the Applicant did not submit both pages of the One Month Notice to End Tenancy for Cause and therefore I told the Applicant later in the hearing that I would not consider it.

Given the above, I asked the Respondent how his proposed evidence was relevant to the issue of unpaid rent. The Respondent stated that the Landlord had taken the dryer out of the rental unit address. The Respondent also stated that the Landlord took his freezer.

The Applicant did not agree to an adjournment. The Applicant stated that the Respondent had two months to get help with submitting evidence. The Applicant pointed out that he had already waited two months for the hearing. The Applicant said he was at the RTB office when the Tenant was there and that this was December 16, 2019.

I considered rule 7.9 of the Rules of Procedure. I denied an adjournment for the following reasons. I was not satisfied the Respondent made sufficient efforts to submit evidence prior to the hearing. I was not satisfied the proposed evidence was relevant to the issues before me. I was satisfied that an adjournment would be prejudicial to the Applicant given the urgency of the issues before me and given the Applicant had already waited two months for the hearing.

I note that the adjournment request was addressed after the issue of jurisdiction arose. The Respondent did not state that his proposed evidence related to the jurisdiction issue.

Jurisdiction

Given the rental unit address is a room, I asked the Applicant questions relating to the jurisdiction of the RTB to decide this matter.

The Applicant provided the following information. The rental unit address is a rooming house. He owns the house. It has 10 rooms which are rented out separately to different people. It has two kitchens, four bathrooms and common areas that all residents can share. He is at the rental unit address three to four times per week. He stays at the rental unit address overnight approximately one or two times per month. He does not use the same kitchen as the Respondent, although he could. He does use the bathrooms.

The Respondent agreed with the above and stated that he hardly uses the kitchen.

I explained section 4 of the *Residential Tenancy Act* (the “Act”) to the parties. Section 4 of the *Act* states:

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 asked the parties for their position on whether the *Act* applies in the circumstances.

The Applicant stated as follows. It is a grey area. The RTB has some partial jurisdiction. He stays at his girlfriend’s 60% of the time and at the rental unit address 40% of the time. He has never used the kitchen the Respondent uses. He does use the common area and the bathroom. He shares one of the rooms with another resident. He does not live somewhere else full time. The address on the Application is a PO box. He works nights. When he gets off work, he runs around and then goes to the rental unit address to watch television, shower and sleep. He washes his clothes at the rental unit address 20% of the time.

The Respondent said he is not familiar with the *Act* and cannot comment on this issue.

I find based on the testimony of the Applicant that the *Act* does not apply to the parties pursuant to section 4(c) of the *Act*. I am satisfied the parties do share bathroom facilities. I am also satisfied the Applicant could share the kitchen facilities with the Respondent if he wished to do so. I acknowledge that the Applicant is only at the rental unit address 40% of the time; however, I am satisfied it is his primary residence as he stated he does not live anywhere else full time. I do not find the fact that he spends 60% of his time at his girlfriend's changes the analysis.

Given the *Act* does not apply, the RTB does not have jurisdiction to decide this matter. The Application is therefore dismissed.

Conclusion

Pursuant to section 4(c) of the *Act*, the *Act* does not apply, and the RTB has no jurisdiction to decide this matter. The Application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 20, 2020

Residential Tenancy Branch