



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- authorization to obtain a return of the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

I waited until 1:40 p.m. to enable the tenant to participate in this hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, a Residential Tenancy Branch ("RTB") employee, and I were the only people who had called into this teleconference.

At the outset of the hearing, I notified the landlord that there was an RTB employee listening in to the hearing for training purposes, but the employee would not be participating in the hearing. The landlord consented to the RTB employee being present during the hearing.

The landlord stated that she did not receive a copy of the tenant's application for dispute resolution hearing package. She confirmed that she received an email from the RTB reminding her to submit evidence for this hearing, so she was alerted to the hearing. She stated that she did not submit any evidence for this hearing. She claimed that she received the phone number and access code to call into this hearing from the RTB.

Preliminary Issue – Jurisdiction to hear Application

At the outset of the hearing, the landlord raised the issue of jurisdiction. She claimed that the RTB did not have jurisdiction to deal with the tenant's application because the landlord shared a bathroom and kitchen with the tenant, during this tenancy. The landlord confirmed that she is the owner of the rental property, which is a house. She said that the tenant rented a room in the house, where the landlord was also living at the same time.

Section 4(c) of the *Act*, outlines a tenancy in which the *Act* does not apply:

*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...*

The landlord provided undisputed evidence that she owns the rental unit and she shared the same bathroom and kitchen with the tenant during this tenancy.

The *Act* specifically excludes the owner of a rental unit who shares a bathroom and kitchen with the tenant. Accordingly, I find that I am without jurisdiction to consider the tenant's application because it is excluded by section 4(c) of the *Act*.

For the above reasons, I find that this is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the tenant's application.

Conclusion

I decline jurisdiction over the tenant's application. I make no determination on the merits of the tenant's application. Nothing in my decision prevents either party from advancing their claims before a Court of competent 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: April 30, 2020

Residential Tenancy Branch