



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, PSF, OLC, FFT

Introduction

In this dispute, the applicant had sought various relief under sections 46, 62, and 72 of the *Residential Tenancy Act* (the “Act”).

The applicant applied for dispute resolution on May 10, 2020 and a dispute resolution hearing was held, by way of telephone conference, on June 9, 2020. Both the applicant and the respondent attended the hearing. The parties did not raise any issues regarding the service of evidence.

I have only considered oral and documentary evidence relevant to the preliminary issue of this application. Further, only relevant testimony has been included in this Decision.

Preliminary Issue: Jurisdiction of the Director (“Arbitrator”)

The respondent provided written submissions in which he argued that because the applicant rented a room in the lower level of his house, and because the kitchen and bathroom in the lower level were “shared” by the respondent with the applicant, that the legal relationship does not fall under the Act. That is to say, the respondent argued that I do not have jurisdiction to resolve this dispute.

The respondent provided video in which he walked through various parts of the lower level, including the second (that is, the downstairs) bathroom. He testified that he and his wife occasionally use the bathroom; the applicant disputed this and said that the respondent’s wife only used it one. The respondent further explained that access to the lower level may be gained from the upper level by way of a set of stairs and a door that, while usually closed (to keep the dogs from entering the lower level) remains unlocked. There are also shared laundry facilities in the lower level. He stated that he rents the room out for \$900.00 per month, and that it is only the bedroom to which the applicant has exclusive access. However, the applicant testified that she viewed the entire lower

level as being in her possession. She submitted documentary evidence showing the bathroom as being used by her.

Also submitted by the respondent were statements purportedly authored by previous “tenants,” all of whom state that they rented a bedroom and that the downstairs bathroom was shared. While I cannot place significant weight on these statements, the applicant did not dispute their accuracy or veracity.

Section 4(c) of the Act states that the *Residential Tenancy Act* does not apply to “living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.”

“Shares” is nowhere defined in the Act or the related regulations, and thus I must turn to the common usage of the word. The most basic definition of the word, and one may turn to the Oxford English or the Merriam-Webster dictionaries for reference, is “to partake of, use, occupy, or enjoy with others.” Similarly, the adjective “shared” is defined as “used, done, belonging to, or experienced by two or more individuals.”

In this dispute, I am not convinced that the kitchen facilities are actually shared or used by the parties; the photographs submitted reflect a kitchen that was, for the most part, used exclusively by the applicant. Why the respondent or his wife would come downstairs to use the kitchen where there is a person renting from them does not make sense.

However, that the respondent’s wife had access to the downstairs bathroom (and indeed she did on at least one occasion use the bathroom, as referred to in the text message exchange) means, in my mind, that the bathroom is shared. While the courtesy text was sent as just that – a courtesy – that the respondent could enter and exit the lower level freely strongly suggests that, but for the bedroom, they had shared used of the bathroom. The situation would be different if the downstairs level was restricted by way of a locked door. But it was not.

For these reasons, I find that the applicant’s living accommodation contained a bathroom which was shared with the respondent. As such, I must conclude that I am without jurisdiction to resolve the applicant’s application for dispute resolution.

Therefore, I make no findings of fact or law in regard to the particulars of the applicant’s 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 Act.

Dated: June 9, 2020

Residential Tenancy Branch