



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 an Application for Dispute Resolution (the “Application”) that was filed by the Applicant under the *Residential Tenancy Act* (the “Act”), seeking:

- The return of their security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Applicant, the Applicant’s Agent (the “Agent”) and the Respondent, all of whom provided affirmed testimony. The Respondent acknowledged receipt of the Notice of Dispute Resolution Proceeding and the parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the hearing and the Application.

At the outset of the hearing the Respondent argued that I do not have the jurisdiction to hear or decide this matter as the Applicant rented a portion of their home as shared accommodation and shared kitchen and bathroom facilities with them. As a result, the Respondent argued that I have no jurisdiction over this matter pursuant to section 4 (c) of the *Act*.

As there is a jurisdictional concern, I find that I must first turn my mind to whether I have the jurisdiction to hear and decide this matter before considering any of the merits of the Application.

Section 4 (c) of the *Act* states that the *Act* does not apply to living accommodation in which a tenant shares kitchen or bathroom facilities with the owner of that accommodation. Although both parties agreed that a short term student room rental agreement was signed in which the Applicant acknowledged that they would be sharing kitchen and bathroom facilities in the accommodation with the Respondent, who is the owner of that accommodation, the parties disagreed about whether this was actually the case. The parties disputed whether the portion of the home rented to the Applicant was a self-contained suite, whether the door between the basement where the Applicant resided and the main house had a locking door, and whether the Respondent maintained access to the basement or the bathroom contained therein, while the Applicant resided there.

The Agent for the Applicant stated that the rental unit was only shared accommodation in the sense that the rental unit was located in the Respondent's home and there is shared laundry. The Agent and the Tenant denied that a kitchen or bathroom was shared with the Respondent as the Applicant resided in a self-contained basement suite with its own entry, bathroom and kitchen. While the Agent and Tenant stated that the rest of the house could be accessed through a door, they stated that it was locked and therefore the Applicant did not have access. They also denied that either the Respondent or their family members had access to the rental unit.

The Respondent stated that they own their home and that a bedroom was rented to the Applicant in the basement as the local university was looking for accommodation for students. The Respondent stated that although the basement has a small kitchen area and a bathroom, it is not a stand-alone suite as it was intended only to be an in-law suite for their parents and has direct access to the rest of the home via an unlocked door. The Respondent stated that they retained access to the entirety of the basement, with the exception of the Applicant's room, throughout the Applicant's occupancy as their freezer, spare room, office, second living room and storage area are all located in the basement and that they and their family members used the bathroom in the basement as a result. The Respondent pointed to the short term student room rental agreement in the documentary evidence before me in support of their position that a tenancy under the *Act* did not exist.

Both parties submitted documentary evidence in support of their testimony.

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case

is on the person making the claim. As a result, I find that it is incumbent upon the Applicant to satisfy me that a residential tenancy under the *Act* exists.

Although the Applicant and their Agent stated that the Applicant rented a self-contained basement suite, the Respondent disagreed stating that only a furnished room was rented to the Applicant. The Respondent stated that they and their family members regularly accessed the basement where the room rented to the Applicant was located and used the washroom located there, as their office and guest room, their second living room, as well as their freezer and storage area are in the basement.

The short term student room rental agreement in the documentary evidence before me clearly states that the Applicant is renting a private room, and that they will share laundry, a living room, a kitchen and a bathroom with the Respondent. The short term student rental agreement is also signed by both parties. As a result, I accept it as very reliable evidence as to the terms of the agreement. While the Applicant and their Agent disputed the terms of the agreement and argued that a tenancy under the *Act* existed, ultimately, I find that they did not submit sufficient documentary or other evidence to satisfy me that the terms of the agreement were other than those stated in the short term student room rental agreement.

As a result of the above, I am not satisfied on a balance of probabilities that a tenancy under the *Act* over which I have jurisdiction existed and I therefore decline jurisdiction to hear and decide the 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*. Although this decision was rendered more than 30 days from the date of the hearing, I note that section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

Dated: July 13, 2020