



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, LRE, RP, OLC

Introduction

On June 23, 2020, the Applicant applied for a Dispute Resolution proceeding seeking a rent reduction pursuant to Section 65 of the *Residential Tenancy Act* (the “*Act*”), seeking to restrict the Respondent’s right to enter pursuant to Section 70 of the *Act*, seeking a repair Order pursuant to Sections 32 and 62 of the *Act*, and seeking an Order to Comply pursuant to Section 65 of the *Act*.

The Applicant attended the hearing. The Respondent attended the hearing as well, with Q.Z. attending as the Respondent’s daughter and translator. All in attendance provided a solemn affirmation.

The Respondent advised that it was her position that the *Act* would not have jurisdiction over this situation as she shared the bathroom and kitchen with the Applicant. As a result, this was the only issue addressed.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

- Does the *Act* apply to this housing situation?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Respondent advised that she owns the property, that there are three separate rooms in the basement, that there is only one kitchen and bathroom there, and a floor plan drawing of the basement was submitted. The kitchen is located in a common area and the bathroom is only accessible by going through bedrooms three and two. She stated that the Applicant originally rented bedroom two, but subsequently moved to bedroom one. She advised that they engaged in this living situation as of July 1, 2019, that rent for bedroom one, which he currently occupies, is \$550.00 per month, and that the rent is due on the first day of each month. She stated that a security deposit of \$300.00 and a pet damage deposit of \$300.00 was paid.

While she lives upstairs, she stated that she would occasionally go downstairs to live in bedroom three whenever she had an argument with her daughter. In addition, she would often have homestay students living in bedrooms two or three so she would be downstairs often, cooking or cleaning. She also stated that she would occasionally use the bathroom.

Q.Z. advised that the Respondent had homestay students living in bedrooms two and three, and that they would often come and go. She also stated that she would occasionally go downstairs to sleep when she had an argument with her mother, and she also used the kitchen to cook. She confirmed that there is only one bathroom and kitchen in the basement, for use for everyone that lives downstairs.

The Applicant advised that he had a choice of all three rooms when he moved in on July 1, 2019. He stated that bedroom three has no walls and there is a sheet that acts as a wall to separate it from the common area and bedroom two. He originally rented bedroom two, but he did not want students entering his space to use the bathroom, so he then moved to occupy bedroom one. He confirmed that there was only one kitchen and bathroom that was to be shared.

He stated that he never saw the Respondent, or her daughter, use the bathroom during the year that he has lived there but it was “certainly a possibility.” He also stated that it was “extremely rare” that the Respondent, or her daughter, would use the kitchen and he estimated that he saw them use the kitchen approximately six times over the year.

He advised that the Respondent would not inform him when she would use the kitchen, but she would simply show up and then leave a mess for him to clean. He also stated that he once saw the Respondent lying down on the bed in bedroom three. Finally, he stated that he was the only person occupying the basement at the moment.

Analysis

In my view, after hearing testimony from both parties, the consistent and undisputed evidence is that there is one kitchen and one bathroom for the entire basement, that there are three bedrooms total, and that the kitchen and bathroom is shared for the entire basement. Furthermore, I am satisfied that the Respondent would occasionally use the bathroom and kitchen facilities.

While the Applicant stated that it was “certainly a possibility” that the Respondent or her daughter would use the bathroom, as he had been living there for over a year, I can reasonably infer that he would have seen one of them use it. I find that his vague answer to be more of an evasive way to avoid directly answering this question, and this causes me to doubt the reliability of his submissions.

Furthermore, if it was his position that he was the sole tenant of the basement and that the *Act* applies to this rental situation, it is not clear to me why he would not have raised an issue had someone else been using his bathroom. Moreover, he advised that the reason he did not want the second bedroom anymore is because he knew that people would have to go through his room to use it. This confirms, in my view, that this was a shared, open living space for many people to use.

In addition, the consistent evidence is that the Respondent, or her daughter, would occasionally use the kitchen. The Applicant acknowledged that the Respondent would do this, and he complained not only of not being advised of when it would be used, but that a mess would be left as well. Again, if it was his position that he was the sole tenant of the basement and that the *Act* applies to this rental situation, it is not clear to me why he never raised this as an issue during his tenancy.

Based on the totality evidence before me, I find it more likely than not that the Respondent did have unimpeded access to the whole basement, that she did utilize a portion of the basement, and that did share a kitchen and/or bathroom with the Applicant. As Section 4(c) of the *Act* stipulates, the *Act* does not apply in situations

where a tenant shares a bathroom or kitchen facility with the owner of the accommodation.

Consequently, I am satisfied that there is no Landlord/Tenant relationship between the parties as the Applicant is actually an occupant. Therefore, he has no rights or obligations under the *Act*. Ultimately, I find that even if the parties intended upon entering into a tenancy agreement as contemplated under Section 1 of the *Act*, the *Act* would not apply to this tenancy. As a result, I have no jurisdiction to consider this Application and render a Decision on 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: July 20, 2020

Residential Tenancy Branch