



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, LRE, OLC

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:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”);
- To dispute a rent increase;
- To restrict or set conditions on the landlord’s right to enter the rental unit; and
- An order for the landlord to comply with the *Act*, regulation, or tenancy agreement.

The hearing was originally convened by telephone conference call on July 10, 2020, at 11:00 AM and was attended by the Applicant and the Respondent, both of whom provided affirmed testimony. The hearing was subsequently adjourned to provide the parties with an opportunity to serve and submit documentary or other evidence in relation to whether a tenancy over which the Branch has jurisdiction exists. An interim decision was made on July 10, 2020, and the reconvened hearing was set for July 24, 2020, at 11:00 AM. A copy of the interim decision and the new Notice of Hearing was sent to each party by the Residential Tenancy Branch (the “Branch”) in the manner requested by each party at the hearing. For the sake of brevity, I will not repeat here the matters covered in the interim decision and therefore the interim decision should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on July 24, 2020, at 11:00 AM and was attended by the Respondent, who provided affirmed testimony. The Applicant did not attend. The Respondent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Respondent claims that the tenancy is excluded under section 4 of the *Act* as the Applicant shared a kitchen and bathroom with them. As a result, I find that I must first determine whether I have the jurisdiction to hear and decide the matters claimed in the Application, prior to assessing the merits of the Application itself.

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 that it was incumbent upon the Applicant to satisfy me, on a balance of probabilities, that a tenancy over which the Branch has jurisdiction, exists.

Section 4 (c) of the *Act* states that the *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. The parties disagreed at the original hearing about whether or not the Applicant shared kitchen or bathroom facilities with the Respondent, and the original hearing was therefore adjourned in order to allow both parties an opportunity to gather and submit evidence for my consideration regarding whether or not a tenancy over which the Branch has jurisdiction exists. At the reconvened hearing, only the Respondent appeared to provide any evidence or testimony for my consideration.

The Respondent reiterated that the Applicant shared a bathroom with them throughout the entire tenancy and that they also shared a kitchen for approximately 50% of the tenancy. In support of this testimony, they pointed to a witness statement in the documentary evidence before me for consideration.

Based on the above, and as the Applicant did not appear at the reconvened hearing to provide any evidence or testimony for my consideration, I find that the Applicant has failed to satisfy me on a balance of probabilities that a tenancy over which the Branch has jurisdiction, exists. I therefore accept the documentary evidence and affirmed testimony of the Respondent and find that a tenancy which is excluded under section 4 of the *Act* exists as the Applicant shares a kitchen and/or bathroom with the Respondent, who is the owner of the accommodation. Based on the above, I therefore decline to hear the claims made by the Applicant in the Application for lack of jurisdiction. I encourage the parties to seek independent legal advice with regards to this matter.

Conclusion

I decline to hear the claims made by the Applicant in the Application for lack of 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: July 24, 2020

Residential Tenancy Branch