



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction. Preliminary and Procedural Matters-

This hearing dealt with an Application for Dispute Resolution by the applicant seeking remedy under the Residential Tenancy Act (Act) for a monetary order for compensation for loss or other money owed.

The applicant and the respondent attended the teleconference hearing. The parties were affirmed and the hearing process was explained to the parties. The applicant and the respondent each confirmed receipt of the other's evidence.

The parties were informed that the first issue to be addressed was whether the Act applied to this dispute. A discussion was held with that question in mind.

Issue(s) to be Decided

Does the Act apply to this dispute and do I have jurisdiction to decide this dispute?

If so, is the applicant entitled to monetary compensation and for recovery of her filing fee paid for this application?

Background and Evidence

The undisputed evidence is that the respondent is the owner of a home and that she rents out other bedrooms in the home, reserving one of the bedrooms for her own use.

The applicant's evidence shows that although the respondent does use the kitchen facilities when she comes to the residential property, she is there infrequently. The tenant's documentary evidence showed that the respondent was at the home more last

fall, but then largely absent from November 2019 through March 2020. The applicant submitted it was not uncommon to go three weeks without seeing the respondent.

The respondent submitted that her bedroom is next to the applicant's bedroom and that he has dined with her and her friends at the home, confirming that she does use the kitchen facilities.

The landlord referred to the "Roommate Agreement" to show that the applicant only rents out the bedroom and that no tenancy was created.

The tenant also provided a copy of the "Roommate Agreement".

I note that the Agreement states that the applicant was renting a room with shared kitchen, laundry and living room space with the respondent.

Analysis

Section 4(c) of the Act provides that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

In this case, the undisputed evidence shows that the respondent primarily lives away at present, but specifically stays in her bedroom when she returns. The Roommate Agreement also specifically states that the applicant was renting a room in a house with a shared kitchen with the respondent and that the respondent may enter the applicant's bedroom to turn off the lights or turn down the heat if the applicant has not turned either off if away.

Although the applicant does not share the residential property frequently with the respondent, I find the applicant does not have exclusive possession of the entire residential property, sharing kitchen facilities with the owner/respondent, and therefore, has no reasonable expectation of privacy.

I find that the respondent/owner has the right to access the property at any time, which a landlord would not be entitled to in a tenancy.

In light of the above, I find that the living accommodation meets the above criteria for exclusion under section 4(c) of the Act, and I therefore decline to find jurisdiction to resolve this dispute.

The applicant is at liberty to seek the appropriate legal remedy to this dispute.

Conclusion

I find that this tenancy does not fall within the jurisdiction of the Act and I have declined jurisdiction over this dispute.

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: August 17, 2020

Residential Tenancy Branch