



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

On April 15, 2020, the Applicant applied for a Dispute Resolution proceeding seeking a return of the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”), seeking monetary compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Applicant attended the hearing. The Respondent attended the hearing as well, with M.Y. attending as an agent for the owner/Respondent of the rental unit. All in attendance provided a solemn affirmation.

The Applicant advised that she served the Notice of Hearing and evidence package to the Respondent by placing it in her mailbox on April 19, 2020. M.Y. advised that the Respondent received this package and took no issue with the package being served in a manner that did not comply with the *Act*. Based on this undisputed testimony, I am satisfied that the Respondent was served the Notice of Hearing and evidence package. Furthermore, the Applicant’s evidence was accepted, and it will be considered when rendering this Decision.

M.Y. advised that the Respondent’s evidence was served to the Applicant by placing it in her mailbox on August 14, 2020. The Applicant advised that she did not receive this evidence. As this evidence was deemed received three days after being placed in the mailbox, in accordance with Section 90 of the *Act*, this evidence was not served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure. As such, the Respondent’s evidence was excluded, and it will not be considered when rendering this Decision.

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

- Is the Applicant entitled to monetary compensation?
- Is the Applicant entitled to a return of the security deposit?
- Is the Applicant entitled to recover the filing fee?

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.

All parties agreed that the tenancy started on September 1, 2019 and ended on or around April 4, 2020 when the Applicant gave up vacant possession of the rental unit. Rent was due in the amount of \$1,380.00 per month and was due on the first day of each month. A security deposit of \$690.00 was also paid.

The Applicant advised that she had rented a room in the upstairs of the property and that she had her own private washroom. In the upstairs area, there was a shared bathroom and kitchen also. She stated that the Respondent lived downstairs, that the Respondent would not use the shared kitchen, but that the Respondent would sometimes clean it. While there was a lock on the door that separated the Respondent's downstairs area from the upstairs area, the Respondent would be upstairs at least three to four times a week and it was her understanding that the Respondent could use the kitchen.

The Respondent advised that the rental unit was a private room and bathroom that was rented to the Applicant with the understanding that the shared bathroom and kitchen could be used by the Respondent at any time. She stated that she did not have a living room downstairs, so she would be upstairs everyday, several times per day. As she has her own kitchen downstairs, she did not have to use the upstairs kitchen. However, she did clean and arrange the shared kitchen often.

Analysis

In my view, after hearing testimony from both parties, I find that the consistent and undisputed evidence is that there was a shared kitchen upstairs that the Respondent would clean, that there was an understanding between the parties that the Respondent had access to this, and that the Respondent would do this frequently. As well, the undisputed evidence is that the Respondent had access to the shared, common areas upstairs and would be frequently up there. As such, I find that the Respondent did have

unimpeded access to the whole common area, did utilize a portion of that shared area, and did use that shared 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 bathroom or kitchen facilities 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 of the rental unit, and not a Tenant as defined under the *Act*. Therefore, she 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 in this matter.

As the Applicant was not successful in this Application, I find that the Applicant is not entitled to recover the \$100.00 filing fee paid for this Application.

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: August 21, 2020

Residential Tenancy Branch