Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, OLC

Introduction

This hearing dealt with the applicant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of what they equated to the respondent's issuance of a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the respondent/landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The applicant testified that they were advised by way of a May 17, 2020 email and handed a copy of a handwritten note on July 19, 2020, that the respondent intended to take sole possession of the premises where the applicant was living as of July 31, 2020. Although the respondent confirmed this information, the parties agreed that the respondent did not use a Notice to End Tenancy Form authorized for use by the Residential Tenancy Branch (the RTB). The respondent maintained in their sworn testimony and in their written evidence that there was no need to use an RTB authorized form because the relationship between the parties was not one that fell within the jurisdiction of the *Act*.

The respondent confirmed that they were handed a copy of the applicant's dispute resolution hearing package on July 24, 2020. I find that this package was duly served to the respondent in accordance with section 89 of the *Act*.

The parties agreed that they had been served with one another's written evidence. However, since the respondent only received the applicant's most recent evidence the night before this hearing, I have not considered that portion of the applicant's written evidence in reaching my decision on this matter. I have considered the remainder of the written evidence provided by both parties, as it was served in accordance with section 88 of the *Act*.

At the commencement of this hearing, the applicant confirmed that they are no longer residing in the house that gave rise to their application. They gave undisputed oral and written evidence that they were prevented from re-entering those premises when the respondent, the owner of that property, changed the locks at the end of July 2020. Since the applicant no longer wishes to resume any tenancy that they may have had in that property, they withdrew their application to cancel the respondent's Notice to End Tenancy. The sole remaining issues were the applicant's assertion that they were entitled to a monetary award for losses arising out of the respondent's contravention of the *Act*. In this application, the applicant was seeking a monetary award in the amount of $3,900.00.

Preliminary Issue- Jurisdiction

Does this Application fall within the Jurisdiction of the *Act*?

Background and Evidence Regarding Jurisdiction

The applicant maintained that they entered into a tenancy agreement with the respondent for use of a bedroom and bathroom, and common areas within this property owned by the respondent. The parties entered into written evidence copies of emails exchanged between them on January 31, 2020 and February 1, 2020. The parties agreed that monthly rent for the portion of the house to be used by the applicant was set at $1,050.00, payable in advance on the first of each month, which included utilities. Although the applicant was supposed to move into the property on March 1, 2020, this did not happen until March 2, 2020. The respondent continues to hold a $525.00 received from the applicant when this arrangement commenced. Although the terms as set out in the emails are unclear, it appears that the applicant believed that this rental arrangement was to last for a full year, with terms to be renegotiated if necessary at the end of that year.

The applicant and their advocate maintained that this was a tenancy agreement covered by the *Act*. They claimed that the respondent's actions relating to their May 17,

2020 decision to reoccupy the premises, including their changing of locks to prevent the applicant from accessing the premises, have contravened the *Act*.

By contrast, the respondent maintained that this was a rental of shared accommodation as it was always the intention of the parties to share the living space. The respondent asserted that there is no dispute that the two parties were sharing the kitchen. They supplied text messages and emails to demonstrate that the applicant knew from the outset of this living arrangement that the landlord would only be releasing portions of the fridge and cupboards within the kitchen for the applicant's use. The respondent testified that they kept all of their furnishings in the home, and intended to stay in the residence and share living space with the applicant when they were not spending time with their husband in their second home in the Seattle areas. The respondent also maintained that the third bedroom was set aside for use by their son, a student attending school in Ontario. The respondent gave undisputed sworn testimony that they have a pattern of staying at this home for a week or two and travelling to their second home in the Seattle area to stay there with their spouse. They provided undisputed evidence that their spouse recently lost his job with an aircraft producer in the Seattle area, necessitating their sale of that second home and their return to live together in the British Columbia home identified in this dispute. They said that the bathroom used by the applicant was always to be a shared bathroom to be used with those staying in one of the other bedrooms, their son when he was back from school.

The respondent gave undisputed sworn testimony that they remained in what they considered to be shared accommodation with the applicant until March 4, 2020. They said that their usual pattern of spending time in their two homes was interrupted by the COVID-19 pandemic, which also led to the loss of their spouse's job and required their son to return from school, as well.

The respondent maintained that they never relinquished their occupation of parts of their house and fully intended to continue living in both homes periodically. They asserted that from the outset the applicant knew that this relationship was to share common areas of the rental unit with the owner of the house and their family when in town, and that these common areas included the kitchen.

Both parties supplied written evidence of what they maintained were analogous situations from previous decisions of Arbitrators in dispute resolution hearings. The applicant and their advocate maintained that these other situations demonstrated that the occasional use of the premises by a landlord did not preclude the existence of a valid residential tenancy that falls within the jurisdiction of the *Act*. They asked for a

common dictionary interpretation of what constituted shared use of kitchen and bathroom facilities. The respondent provided examples of cases where Arbitrators had ruled in accordance with section 4(c) of the *Act* that those sharing kitchen and/or bathroom facilities are roommates and that there is no residential tenancy created that falls within the *Act* under such circumstances. I advised both parties that Arbitrators presiding over dispute resolution hearings rely on the facts and circumstances of each dispute in arriving at their decisions

Analysis- Jurisdiction

As was noted by the respondent, section 4(c) of the *Act* reads in part as follows:

> *4 This Act does not apply to…*
> *(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,…*

In this case, the lack of an actual written agreement between the parties introduces an element of uncertainty that requires considering the whole range of interactions between the parties to interpret whether this arrangement falls within the jurisdiction of the *Ac*t. The emails of January 31, 2020 and February 1, 2020 do identify a contract, which could be interpreted as a residential tenancy agreement as defined by the *Act*. The parties have identified when the tenancy was to begin and how much the applicant would be paying each month. The respondent has requested, obtained and retained a security deposit from the applicant. Although the wording of these emails is somewhat inconclusive, it does appear that the applicant also believed that they were entering into a one year fixed term for the arrangement agreed to by the respondent. While the above information establishes that there was a contractual arrangement between the parties, those communications do not identify whether or not the parties were sharing this living space, including the kitchen and bathroom with one another.

I should first note that I find little evidence to support the respondent's claim that the applicant understood that they would be sharing their assigned bathroom in this three bedroom home with the respondent and/or the respondent's family members when they were in the community. There are clearly other bathrooms in this house, and the respondent did not claim that they actually used the applicant's bathroom, even when they were staying in the home together.

I do find the emails and text messages exchanged between the parties provide ample support to the respondent's assertion that the parties understood that they would be sharing the kitchen facilities in this home. These communications clearly demonstrated

that the applicant was requesting and the respondent agreed to provide room in the refrigerator for the applicant's food that needed refrigerating. Similarly, messages were exchanged whereby the respondent agreed to clear out some cupboards to enable the applicant to store food and kitchen accessories. Given the detailed nature of these communications, it seems very clear that the applicant fully realized that they did not have full and sole access to the kitchen, as the respondent was leaving even refrigerated food in the kitchen.

I also attach significance to the undisputed testimony provided by the parties that the respondent did continue staying in the home until March 4, 2020, a few days after the applicant moved into the home. Thus, even by the applicant's admission, the parties did share kitchen facilities for the initial period when the applicant was there. While I realize that this period of undisputed shared use of the kitchen was only for a relatively short period of time, allowing a property owner to remain in a property and share kitchen facilities with the person they are renting to is much more characteristic of the shared living arrangements that the respondent is claiming than any actual tenancy established between the parties.

I also note that when the respondent was poised to return to the dwelling upon their return from the U.S. during July, that they exchanged communications with one another that they would be wearing protective masks while living in the same house. Although this happened after the respondent sent the applicant a notice to end their living arrangement, I find that these communications were again more supportive of the respondent's position with respect to the nature of this tenancy than the applicant's claim that the respondent was not expected to be occupying the home or sharing common areas while the applicant lived there.

At the hearing, the applicant's advocate noted that the respondent did not stay in the dwelling for a lengthy period of time and asked that consideration be given to this aspect of the dispute. In this regard, I find that the respondent provided a logical explanation for why they did not return to Canada from their home in the Seattle area during the early stages of the COVID-19 pandemic. They provided sworn testimony and written evidence that the circumstances resulting from the COVID-19 pandemic, and their spouse's subsequent loss of his employment in the Seattle area led to major variations in how they ended up using their residential properties from March 5, 2020 until they returned to Canada in July. The applicant and their advocate did not introduce any evidence to refute the respondent's assertion that when they entered into the agreement with the applicant, they fully expected to continue their practice of moving back and forth between their two houses every week or two. When they

entered into this living arrangement, the respondent could not have known that their spouse would lose their job, that they would be forced to sell their Seattle area home, that they would need to assist their spouse in preparing their Seattle area home for sale, that their son's education would be disrupted or that border traffic between Canada and the United States would be greatly restricted, with mandatory quarantines being put in place for those re-entering Canada from the United States. For these reasons, I find that the respondent has provided compelling and credible explanations as to why they did not continue with the plans they had in place to alternate their stays in their two homes on opposite sides of the border.

For these reasons, I find on a balance of probabilities that the respondent has demonstrated to the extent required that the arrangement between the parties called for a joint sharing of the home, with the exception of the bedroom and bathroom, which were to be used solely by the applicant. Since these shared facilities include shared use of the kitchen by the two parties, I find that section 4(c) of the *Act* excludes this dispute from consideration pursuant to the *Act* as the relationship between the parties was not one of landlord and a tenant. I find that the *Act* does not apply to this tenancy. I therefore have no jurisdiction to render a decision in 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: August 27, 2020

Residential Tenancy Branch