



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, PSF, LRE, FFT

Introduction

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

- cancellation of the landlords' One Month Notice to End Tenancy for Cause, dated July 21, 2020 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlords provide services or facilities required by law, pursuant to section 65;
- an order restricting the landlords' right to enter the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The female landlord did not attend this hearing, which lasted approximately 20 minutes. The male landlord, the landlords' agent, the tenant, and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlords' agent confirmed that she was the daughter of the two landlords named in this application and that she had permission to speak on their behalf. The tenant confirmed that her advocate had permission to speak on her behalf.

The landlords' agent confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant's advocate confirmed receipt of the landlords' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application and the tenant was duly served with the landlords' evidence.

At the outset of the hearing, I asked both parties to make verbal submissions regarding whether I had jurisdiction to hear this matter, since the landlords' agent raised this issue at the beginning of the hearing.

Issue to be Decided

Does the Residential Tenancy Branch ("RTB") have jurisdiction to hear this application?

Background and Evidence

The landlords' agent stated the following facts. The RTB does not have jurisdiction to hear this application because it is excluded by section 4(c) of the *Act*. The landlords are owners of the rental unit and share a kitchen and bathroom with the tenant. Since the beginning of this tenancy, the tenant has rented three different rooms in the shared house with the landlords and she has used all portions of the house. There is no separation between the upper and basement portions of the house. The landlords' belongings are in the tenant's kitchen. The tenant shares meals with the landlords in the same kitchen. The landlords' agent has witnessed the living arrangements because she herself lives in the same house.

The tenants' advocate stated the following facts. The RTB has jurisdiction to hear this application. When the tenant moved in, she had access to the whole house, and shared the kitchen and bathroom with the landlords. The tenant was then moved downstairs and was told by the landlords to use a self-contained suite for her own purposes with a tenancy agreement. In her application, the tenant asked for quiet enjoyment of her basement suite because the landlords are using her kitchen and bathroom without her permission. The landlords used a tenancy agreement and a 1 Month Notice, so the RTB has jurisdiction because the RTB forms are being used and the landlords are trying to opt out of the *Act*.

Analysis

Section 4(c) of the *Act*, outlines a tenancy in which the *Act* does not apply:

*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...*

It is undisputed that the landlords own the rental unit. I find that the landlords and tenant share the same kitchen and bathroom during this tenancy.

The tenant agreed that she shared the kitchen and bathroom with the landlords when she first moved in. I find that the parties are still sharing the same kitchen and bathroom, even if the tenant is living in the basement suite, and regardless of whether it is with the tenant's permission. I find that this is a shared house and that both parties continued to share the kitchen and bathroom, as they did at the beginning of this tenancy. I also find that the use of RTB forms such as a 1 Month Notice and a tenancy agreement, an agreement which the tenant did not provide for this hearing, do not conclusively determine whether the RTB has jurisdiction over this tenancy.

The *Act* specifically excludes the owner of a rental unit who shares a kitchen and bathroom with the tenant. Accordingly, I find that I am without jurisdiction to consider the tenant's application because it is excluded by section 4(c) of the *Act*.

For the above reasons, I find that this is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the tenant's application.

Conclusion

I decline jurisdiction over the tenant's application.

I make no determination on the merits of the tenant's application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent 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: September 03, 2020

Residential Tenancy Branch