



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for damage or compensation under the Act for the Tenant in the amount of \$15,000.00.

The Tenant and his mother, and the Landlord and her daughter, appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties.

During the initial stages of the first hearing, the Landlord advised that she is the owner of the residential property. She testified that she lived in the basement suite of the residential property during the tenancy, which she had set-up with a refrigerator and a hot plate. The Landlord said that a previous tenant had used this suite as a residence. However, the Tenant said that he and his wife (the Landlord's daughter), shared the rental unit kitchen with the Landlord periodically, as she sporadically used it for cooking that she could not do in the basement suite. The Tenant said that he had believed that they would have exclusive possession of the rental unit for the rent paid, but that this was not the case.

I find that the Tenant did not have exclusive possession of the rental unit. Based on the evidence before me, I find it is more likely than not that the Landlord used the rental unit kitchen facilities on an infrequent basis. However, I find that the Landlord believed she was entitled to use the kitchen facilities in the rental unit, given the limited amenities in the basement suite, in which the Landlord lived.

Section 4 of the Act states:

What this Act does not apply to

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, . . .

[emphasis in original]

Further, I find that the Tenant did not have exclusive possession of the rental unit, which he was entitled to, pursuant to section 28 of the Act, which states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*]; . . .

[underlining emphasis added]

Section 29 of the Act sets out landlords' rights and responsibilities regarding entering the rental unit:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

...



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(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

[underlining emphasis added]

I find that this accommodation is outside of the Act, and therefore, I have no jurisdiction to consider this matter.

Conclusion

I decline to rule on this matter, as I have no jurisdiction to consider this Application. The Parties are referred to the Civil Resolution Tribunal for assistance in resolving their dispute.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 19, 2020

Residential Tenancy Branch