



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the respondent, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the applicant served the respondent with her application for dispute resolution via registered mail. I find that the applicant's application was served in accordance with the *Act*.

Preliminary Issue- Jurisdiction

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

The respondent testified that the *Act* does not apply to the dispute between the parties because the applicant and the respondent shared a bathroom and kitchen at the subject property.

The respondent testified that she put up an online add for a house share that the applicant responded to. The respondent entered the advertisement into evidence, it stated in part:

\$1000 Share boutique [neighbourhood] home near harbour, parks and ocean

Want great company in a newly-renovated heritage home just steps from the ocean? Come share my beautiful Heritage Home....

The advertisement goes on to describe the respondent and the respondent's attributes. The respondent testified that the advertisement clearly indicates that the successful applicant would be sharing the subject rental property with the respondent.

The respondent testified that she and the applicant verbally agreed that the applicant would move into one of the bedrooms at the subject property on a trial period of one month and that the applicant would pay the respondent \$950.00 for the month. The applicant did not dispute the above testimony. Both parties agreed that a tenancy agreement was not signed and that the applicant did not pay a security deposit to the respondent.

The respondent testified that prior to the applicant moving in she kept a bedroom at the subject property where she resides for the majority of the year; however, she also owns a summer home outside the city and spends many summer nights at that home. The respondent testified that another person responded to her online advertisement and she decided to rent out the room she otherwise would have stayed in, but that she did not give exclusive possession of her home to her house share mates and regularly attended at the subject rental house through the month of June 2020. The respondent testified that while at the subject rental property she used the shared kitchen and used the same bathroom as the applicant.

The respondent entered into evidence a witnessed statutory declaration of D.P., one of the house share mates, which states in part:

- I lived on the main floor of [the respondent's] home at [the subject property] from June 3, 2020 until late June when I returned to my own home.....
- [The applicant] shared the main floor bathroom with me, and with [the respondent] when she was at the home. We all shared the kitchen which was the main social gathering place in the home.

- During the first half of June 2020, [the respondent] often came to the home and we would visit in the kitchen. The kitchen, which had a couch, was also the social area where we visited. [The respondent] sometimes used her bathroom during these visits. Her electric toothbrush and toothpaste remained on the bathroom counter throughout June....
- The bathroom, with a shower, was shared by me and [the applicant] as well. On one occasion during her visit [the respondent] had a shower there.

The respondent testified that part way through June 2020 the applicant became extremely confrontational and so she avoided her and would only attend at the subject property when the applicant was not in. The respondent testified that she contacted D.P. before she came over to determine if the applicant was at the subject property. The statutory declaration of D.P. confirms the above testimony.

The respondent entered into evidence a statutory declaration from tenant J.P., who resides in a self-contained suite at the same rental address. Tenant J.P. did not share a kitchen and bathroom with the applicant. The statutory declaration states in part:

- My husband [L.S.] and I have been tenants of [the respondent] since March 1, 2018.....
- We are aware that [the respondent] owns a summer lake home nearby which she uses during the summer and rents out in the winter.....
- I regard [the subject property] as [the respondent's] year-round, permanent home. Although [the respondent] does spend many summer nights at her lake home, she is always a presence at [the subject property]. She often stops by to visit with us throughout the year.

The applicant testified that the advertisement did not specifically state that she would be sharing the home with the respondent, just that she would be sharing the subject property. The applicant testified that the respondent never informed her that the respondent would be using the kitchen and bathroom and that she thought she would be sharing the kitchen and bathroom with the other room mates, not the respondent. The application testified that she was shocked when the respondent would attend at the subject property without giving notice, and that on one occasion the landlord asked her if she had cooked bacon without the fan on.

The applicant testified that the respondent was living at her lake house, not the subject property. The applicant testified that section 4(c) of the *Act* implies that the *Act* doesn't

apply if the owner is living at the subject property and since the respondent was not living there, the *Act* applies.

The applicant testified that she and the respondent had a verbal tenancy agreement and that she was protected as a tenant under the *Act*.

Analysis

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

I find that the owner of living accommodation can share kitchen or bathroom facilities with a tenant without residing at the subject property. Had the intent of the legislation been otherwise, the legislation would have stated that the *Act* does not apply to living accommodation in which the owner resides with the tenant and in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

I find that the advertisement entered into evidence by the respondent clearly indicates that the owner of the subject property is looking for someone to share the property with. While the advertisement does not specifically state that the property is to be shared with the owner, the personal details provided about the owner and the context of the advertisement make it clear that the house would be shared with the owner.

Based on the respondent's testimony, the advertisement and the statutory declarations of D.P. and J.P., I find that the respondent did not give up possession of her home and shared the kitchen and bathroom of the subject property with the applicant and other house mates throughout the month of June 2020.

Based on the above, I find that pursuant to section 4(c) of the *Act*, I do not have jurisdiction to hear this matter. The applicant's application is therefore dismissed.

Conclusion

I dismiss the applicant's application without leave to reapply.

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: October 19, 2020

Residential Tenancy Branch