



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing was convened as a result of the applicant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The applicant has applied for a monetary order in the amount of \$420.00 for the return of their security deposit, plus the filing fee.

The applicant and two respondents, DH and SH (respondents) attended the teleconference hearing. The parties were affirmed. Both parties confirmed that they had been served with documentary evidence and had the opportunity to review that evidence. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties confirmed their email address at the outset of the hearing and stated that they understood that the decision would be emailed to the parties.

As jurisdiction was raised, I will first determine if the Act applies to this living arrangement.

Issue to be Decided?

- Does the Act apply to this living arrangement?

Background and Evidence

During the hearing, the applicant testified that they rented a room inside of a home and did not dispute that the respondents owned the home. The tenancy agreement was submitted in evidence and reads in part:

....Room #1...

This is a **shared house**. The tenant is renting a **single occupancy room** in a house with common areas that are shared with other tenants and the landlords...

In the matter before me, the home happens to be a duplex, which I will refer to as side A and side B for ease of reference in this decision. The applicant resides in room #1, a bedroom, on side B where there is also a workshop. The respondents reside on side A; however, there is no dispute that the respondents use the workshop on side B regularly. Side B also includes other co-tenants renting other rooms and there is shared common area, a kitchen and bathroom.

While the applicant claims they have not seen either respondent use the kitchen or bathroom on side B, the applicant admits that the respondents do have access to the kitchen and bathroom on side B. The male respondent testified that they use the bathroom on side B, if needed, but is respectful and always lowers the lid and flushes so is not surprised that the applicant may not have seen them use the bathroom on side B.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 4(c) of the Act applies and 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 added]

Based on the above, I find the Act does not apply to this living arrangement as I accept the undisputed testimony of the applicant who confirmed that the respondents have access to the kitchen and bathroom and the workshop on side B, which is the same side the applicant rents a bedroom, Room #1. While the applicant may not have seen the male respondent use the bathroom or kitchen, I find it highly unlikely that the male landlord would leave the workshop on side B through the common area and front door, only to use the bathroom on side A, when they own the home. In other words, I accept the evidence of the respondents as I find it has the ring of truth.

Based on the above, I refuse jurisdiction to hear this dispute as I find the Act does not apply to this living arrangement. As the Act does not apply, I do not grant the recovery of the filing fee.

Conclusion

The application has been refused due to lack of jurisdiction as per section 4(c) of the Act.

The filing fee is not granted to the applicant as the Act does not apply to this living arrangement.

This decision will be emailed to both parties as indicated above.

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: February 22, 2021

Residential Tenancy Branch