



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction

On December 31, 2020, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned an application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

I find that there is a question regarding whether I have jurisdiction to make a decision in this matter. I find that a participatory hearing is required in order to determine jurisdiction.

I have been delegated authority under the Residential Tenancy Act to consider the application for:

- An order for the return of a security deposit or pet damage deposit by direct request, pursuant to section 38; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The respondent did not attend the hearing although I left the teleconference hearing connection open until 10:00 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the applicant and I were the only ones who had called into this teleconference.

The applicant testified that she sent the respondent the Notice of Dispute Resolution Proceedings by registered mail on January 2, 2021 and it was returned to her unclaimed. The address the package was sent to was the same one as the tenant

shared with the respondent while she lived in the unit. The tracking number for the registered mailing is recorded on the cover page of this decision.

I am satisfied the respondent is deemed served with the Notice of Dispute Resolution Proceedings on January 7, 2021, five days after it was mailed in accordance with sections 89 and 90 of the Act. This hearing was conducted in the absence of the respondent.

Issue(s) to be Decided

Do I have jurisdiction to make a decision in this matter?

Background and Evidence

The applicant testified that she and the respondent shared a kitchen in the respondent's living accommodation. The applicant had her own bathroom which was not shared. The applicant testified that the unit was a strata-titled apartment, however the applicant and respondent never discussed whether the respondent paid a mortgage, owned the unit or paid rent to a landlord.

A copy of the "rental agreement" was provided by the applicant. I note that in the document, the respondent notes that he insures the house overall and that tenants are responsible for content insurance. I also note that the applicant was denied use of the living room area by the respondent.

Analysis

Section 4(c) of the Residential Tenancy Act states:

This Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

Based on the evidence before me, I find the applicant and the respondent shared a kitchen facility. However, I must use the evidence before me to make a determination about whether the respondent owns the unit shared by the parties. I turn to the specific paragraphs in the "rental agreement" regarding the respondent insuring the house overall and the respondent's denial of usage of the living room to make this determination. On a balance of probabilities, and in the absence of any evidence to the contrary, it appears to me that the respondent likely owned the shared accommodation.

As section 4(c) states the Residential Tenancy Act does not apply when an owner shares the living accommodation with the owner of that accommodation, I must decline the jurisdiction to make a decision in this matter.

Conclusion

I decline to hear this matter further 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: March 23, 2021

Residential Tenancy Branch