



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing dealt with the adjourned Direct Request Application filed under the *Residential Tenancy Act* (the “Act”). The Applicant applied for the return of their security deposit and to recover her filing fee. The matter was set for a conference call.

The Applicant attended the conference call hearing and was affirmed to be truthful in their testimony. As the Respondent did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure require that the Respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The Applicant testified that they served the Respondent with the Application for Dispute Resolution, Notice of Hearing, and their documentary evidence by personal service, on November 21, 2020. I accept the Applicants sworn testimony; I find that the Respondent has been served with the necessary documents in accordance with the Act.

The Applicant was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matter – Jurisdiction

As the Applicant's Direct Request Application was adjourned due to questions that the adjudicator in those proceedings, had regarding jurisdiction, the issue of jurisdiction was addressed at the outset of this hearing.

The Applicant testified that they were the tenant of the Respondent, that they rented a room, bathroom, and kitchen from the respondent in the respondent's townhome. The Applicant testified that the Respondent would stay at the rental unit, using the kitchen and bathroom, every so often, for a day or two at a time. The Tenant submitted a copy of the tenancy agreement and their notice to end tenancy into documentary evidence.

The Applicant testified that the Respondent would always call, providing them with notice as to when they would be coming to stay at the rental property.

I have reviewed the tenancy agreement, the notice to end this tenancy and I note that this agreement clearly states that the Tenant rented the exclusive use of a furnished room, in the Landlord's townhome, for \$500.00 per month. I also noted that the Tenant wrote, in their Notice to end this tenancy, that they rented a room, and not the entire townhome.

Section 4 of the Act defines the types of housing agreements that are not covered by the Act. Section 4 of the Act states the following:

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,

Based on the tenancy agreement that I have before me, the notice to end the tenancy and the Applicants testimony, I find that the Applicant and the Responded shared the use of the kitchen on this rental property during this tenancy. Pursuant to section 4(c) of the Act, I find that I must decline to accept jurisdiction over the Applicant's dispute with the Respondent.

Although the Residential Tenancy Act does not apply to this matter, the parties may further pursue this matter through a court of competent jurisdiction.

Conclusion

For the reason stated above, I decline jurisdiction to resolve this dispute. I have made no determination on the merits of the Applicant'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: March 8, 2021

Residential Tenancy Branch