



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

The Applicant filed the Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) for a monetary order for the return of the security deposit, as reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) on March 9, 2021. In the conference call hearing I explained the process and provided each attending party the opportunity to ask questions.

Both parties confirmed receipt of the evidence prepared by the other in advance of the hearing. The hearing proceeded on this basis. At the beginning of the hearing, I assessed the pieces that the Respondent provided to the Residential Tenancy Branch. Based on the Respondent’s list of materials provided, I determined that they had not sent in more recent pieces of their evidence. Given that these were provided to the Applicant I proceeded with the hearing. I advised the parties I would address any gaps in the evidentiary record versus oral testimony should the need arise.

Preliminary Issue - Jurisdiction

The Notice of Dispute Resolution shows the Applicant as the ‘tenant’, and the Respondent as the ‘landlord’ in this matter. There is a written tenancy agreement in place. That sets out the Applicant paid \$700 to the Respondent on a monthly basis, and paid \$500 as a form of deposit when they first moved in.

The Applicant lived in one room at the property address from January 9, 2020 until they moved out on June 30, 2020. In the hearing, the Respondent set out that they shared the kitchen, living space, and dining area with the Applicant. They stated that they lived with the Applicant and “we lived together and had a good relation.” The Applicant confirmed this arrangement, and provided that they had a separate bathroom; however, all other areas in the property were shared.

The *Act* sets out what it applies to in section 2: “tenancy agreements, rental units and other residential property.” The *Act* also sets out, in section 4, what it does *not* apply to. In subsection (c), this is: “living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.”

Further, the *Act* section 1 contains the following definition:

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

From weighing the evidence and considering the submissions of both parties, I find the situation is not that of a residential tenancy. Even though there was payment of funds on a monthly basis, there was not a right to possess a separate rental unit. The *Act* is plain in stating that it does not apply to an arrangement where an occupant shares a bathroom or kitchen with the owner. Here, the Applicant and Respondent shared the kitchen and other areas. Although there was a separate bathroom provided to the Applicant here, this does not in and of itself create a tenancy.

Based on these facts, and an application of the legislation, I do not have jurisdiction to hear this Application.

Conclusion

Having declined jurisdiction to hear this matter, I dismiss this Application for Dispute Resolution in its entirety, without leave to reapply. With this dismissal, the Applicant is not entitled to recovery of the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 10, 2021

Residential Tenancy Branch