



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTLAND RENTAL SOLUTIONS
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNETC, MNSD, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 24, 2020, wherein the Applicant sought monetary compensation from the Respondent including compensation pursuant to section 51 of the *Residential Tenancy Act* (the "Act"), return of the security deposit paid, and recovery of the filing fee.

The hearing of the Application was scheduled for 1:30 p.m. on March 11, 2021. The Applicant's representative, S.C. called into the hearing. As did the Respondent, as well as his legal counsel, J.W. J.W. also acted as a translator for the Respondent. Both parties were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenant's Application concluded on March 11, 2021. This Decision was rendered on April 14, 2021. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution

proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

Preliminary Matter—Respondent's Name

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rule 4.2 of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

On the Application the Applicant inverted the Respondent's name. I therefore Amend the Application to correctly name the Respondent.

Preliminary Matter—Jurisdiction

At the outset of the hearing, counsel for the Respondent submitted that the dispute between the parties was not within the jurisdiction of the *Act* on the basis that the parties share a kitchen and bathroom.

The Respondent testified that he owns the subject property. He further testified that he and the Applicant share the only kitchen in the residential premises. He conceded that he did not use the kitchen often as he is a single person and usually used the microwave oven in his room for take out, but stated that when he wanted to make a "real meal" he used the kitchen. The Respondent also testified that he has access to the main floor and used the shared family room/eating/dining room area. He also stated there is only one bathroom on the main floor which is accessed by the Applicant and anyone else.

The Respondent confirmed that the residential property is his only residence in Canada. He stated that he visits family outside of Canada, and was doing so at the beginning of 2020 when the COVID-19 global pandemic hit, which prevented him from returning until September 11, 2020 when he managed to get a flight.

The Applicant testified they did not share a bathroom and kitchen as the Respondent had his own kitchen and bathroom. She stated that they were friendly, but they only had dinner together approximately once a year.

The parties signed a residential tenancy agreement, a copy of which was provided in evidence. The Respondent testified that the Applicant presented the agreement to him and informed him that it was a “standard contract” for her company. He confirmed he is not fluent in English but signed it because the Applicant wanted him to sign it.

The Respondent testified that when the Applicant first moved in it was just her living in the home. He further stated that she informed him that she was in the business of rental property management and that she would have roommates in the home and would be responsible for collecting rent from those roommates.

The Applicant confirmed that she prepared the tenancy agreement as she used the property as an AirBnB. She also stated that she translated the tenancy agreement to him and further stated that she left the agreement with him for 24 hours so he could understand the agreement.

The Applicant testified that the door between the Respondent’s living area and the main living area was sealed with a coded lock which she installed at the beginning of the lease. She claimed that they never used the Respondent’s bathroom. The Applicant confirmed that the Respondent did not have a stove or oven, but also claimed that the Respondent is from a country where 99% of the people do not bake. She stated that approximately once a year he asked to use the kitchen.

In terms of the coded lock, the Respondent stated that the Applicant installed the lock in the 2nd year. She told the him that she would have other people coming in and out and she wanted to make sure there was a lock in place to ensure his privacy.

Analysis and Conclusion

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

After consideration of the parties’ testimony, the documentary evidence before me, and on a balance of probabilities, I find this dispute it not within the jurisdiction of the *Residential Tenancy Act*. On balance, I find the Applicant shared a kitchen with the Respondent owner of the property. As such, I decline jurisdiction pursuant to section 4(c) of the *Act*.

The Applicant provided a copy of the real estate listing for the property in evidence and which described the property as follows:

Welcome to this south facing Newer Corner Unit ½ Duplex in the South Slope Area of [city name withheld]. This very well kept home Features open layout with big bright windows, spacious kitchen with engineered stone counter-tops. SS/appliances and plenty of cabinetry, 3 bedrooms up and a large balcony with Astonishing Views, and 1 spacious bedroom on main floor which can easily convert to a potential suite for your mortgage helper. Very quiet location, Only 5 minutes drive to [name withheld] shopping centre, restaurant, Liquor store, groceries. This will be your dream home. Don't miss out!!! Private Showing by appointment Sat & Sun 2:00-4:00pm Nov/21 & 22. [phone number withheld]

Notably, the listing does not indicate this is a multiple family dwelling, and specially notes that the basement on the main floor *could be* converted to a potential suite as a "mortgage helper". There is no indication that the property contains two separate suites.

I find it likely the Applicant installed a lock between the Respondent's living area and the main home as she operated an AirBnB business from the residential premises. I find it more likely this was done to provide privacy to the Respondent, than to exclude him from the main residential premises.

I am persuaded by the Respondent's testimony that he used the main residential premises, and the kitchen, as and when needed. While it may be that he often ate take out, and heated it with his microwave in his room, I accept his testimony that when he wanted to make a meal, he used the only kitchen in the residential premises.

Although the parties signed a residential tenancy agreement, I am not persuaded that this indicates this was a residential tenancy. I accept the Respondent's testimony that he signed the document at the request of the Applicant and did not understand what he was signing.

For the above reasons I decline jurisdiction over this dispute.

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: April 14, 2021

Residential Tenancy Branch