



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, made on October 29, 2020 (the "Application"). The Applicant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00 AM on April 13, 2021 as a teleconference hearing. Only the Applicant appeared at the appointed date and time. No one appeared for the Respondent. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Applicant and I were the only persons who had called into this teleconference.

Preliminary Matters

The parties had a dispute resolution hearing scheduled on February 22, 2021. The Respondent attended the hearing; however, no one appeared for the Applicant. In the decision dated February 22, 2021, the Arbitrator dismissed the Applicant's Application without leave to reapply. The Applicant applied for a review consideration and on March 2, 2021 was granted a new hearing based on the fact that she was unable to attend the original hearing.

At the start of the hearing, the Applicant testified that she began renting a room in the Respondent's home on March 1, 2018. The Applicant stated that she was responsible for paying her rent in the amount of \$700.00 a month from March 2018 to March 2019 while she occupied a large bathroom. The Applicant stated that as of March 2019 she moved to a smaller bedroom in the home, which reduced her rent to \$520.00 which was due to be paid to the Respondent on the first day of each month. The Applicant stated that she paid a security deposit in the amount of \$350.00 which the Respondent currently holds.

The Applicant stated that she shared the rental property with the Respondent. The Applicant stated that all areas of the home aside from her bedroom was shared with the Respondent and other occupants in the home. The Applicant stated that the Respondent typically slept in a separate structure located at the rear of the property, however, the Respondent had the ability to enter the rental unit and use the common areas including kitchen and bathroom at any given time throughout the tenancy.

Section 4(c) of the *Act* confirms that the *Act* does not apply to living accommodation in which the owner shares bathroom or kitchen facilities with the Applicant. In this case, the Applicant testified that she shared common areas with the Respondent which included the kitchen as well as bathroom facilities.

Accordingly, pursuant to section 4(c) of the *Act*, I find the *Act* does not apply to the agreement between the parties. The Application is dismissed for lack of jurisdiction.

Conclusion

I decline to proceed due to a lack of jurisdiction, and the Application is dismissed without leave to reapply. The Applicant should seek legal advice from their lawyer as to how to resolve 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 13, 2021

Residential Tenancy Branch