



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the applicant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed; and
- to recover the cost of the filing fee.

The parties attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. 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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Does this dispute fall under the jurisdiction of the Residential Tenancy Act?

If so, is the applicant entitled to monetary compensation from the respondents and to recover the cost of the filing fee?

Background and Evidence

The applicant's living space is in the basement of a home owned by the respondents, who live upstairs. The evidence shows the applicant moved into the basement in mid-November 2019, paid a monthly rent of \$850 during her occupancy, and began moving out in March 2020. The applicant did not pay a security deposit and there was no written tenancy agreement.

The layout of the home was provided in a diagram submitted by the respondents. All parties have access to their respective living spaces through the same front door and entrance way, with stairs leading to the upper unit and stairs leading to the basement area, where the applicant resides. There is no separate door to close off either of the upper or the lower units and both parties have full access to either of their respective living spaces.

There is no dispute that the only laundry facilities in the home are located in the basement on the opposite side of the stairway, at the far side of the applicant's living area. In the laundry room, the respondents also have a freezer and storage area.

The respondents submitted that the living space in question was advertised as a semi-private, one bedroom suite, and that the situation was more like a house sharing arrangement. The respondents submitted that the applicant had a private bedroom and bathroom and her own kitchen facilities. The respondents said there is a second bedroom in the basement suite, which is used by their overnight visitors, usually being in the summers.

The respondents submitted that the price for rent is set lower as the respondents have to pass through the living area in the basement to access the laundry facilities, storage

and freezer, and the applicant was well aware of and fine with this situation when she moved in. The respondents submitted that they were always respectful of the applicant's privacy, calling out before coming down the stairs, and keeping their use of the laundry to a minimum, usually weekends. However, the tenant had a closed-off bedroom and bathroom if she wanted her privacy during their trips to the laundry.

The respondent submitted that the applicant's dog would wander upstairs to visit them when the applicant was not at home, as well as the applicant would sometimes come upstairs, as there was no door between the living areas.

The respondents submitted that at no time during her 3 ½ month stay did the applicant mention any issues with privacy, only learning of the issues when receiving the applicant's application for dispute resolution months later.

Included in the documentary evidence of the respondents was a notarized affidavit from an individual who declared that they rented the "semi-private basement suite" in the home of the respondents for a period of 6 years, 9 months, until September 30, 2019. The affiant goes on to declare that there is no door separating the suite from the upstairs and the suite was "clearly not presented as completely private. I understood this arrangement and was very comfortable with it".

The affiant further declared "I understood that there was a need for the landlord to pass through the suite in order to access the laundry room, and back storage area where they had a freezer, cold room, and other items in storage".

The applicant said that she never felt like she had a home, as there was never any privacy from the respondents. The applicant submitted that the respondents continued to interrupt her meditation time, which she required due to her PTSD and extreme anxiety. The applicant submitted that the respondent, DB, made her feel threatened when he spoke to her about her dog defecating in the living space and not tidying up the area.

The applicant submitted she felt forced into leaving.

The applicant said the respondents may have told her the spare room was used for guests.

Analysis

For consideration in this application is whether the applicant has the same rights and obligations afforded to all tenants under the Act. Under the Act, a tenant is entitled to exclusive use of the rental unit and the landlord may not enter the rental unit except as provided under section 29 of the Act.

In this case, I find the respondents submitted sufficient evidence to support that the applicant did not have exclusive use of the rental unit as the clear evidence shows that the respondents used part of the basement to walk through, access and use the laundry facilities, storage, and freezer area located in the basement. The walkway was located in the middle of the basement suite, between the applicant's bedroom and bathroom and the living/kitchen area.

I find sufficient evidence that the living space was advertised as semi-private, to account for the respondent's access to the laundry facilities, and that the tenant was made aware of this arrangement prior to, or at the time of, her occupancy. In my view, semi-private does not bestow exclusive use.

In light of all of the above considerations I find it more likely that this living arrangement is that of a shared space as opposed to a landlord and tenant agreement. Accordingly, I find I am not satisfied that the Act applies to this living arrangement and I decline to take jurisdiction to resolve this dispute. The parties are at liberty to resolve their dispute in the appropriate forum, such as Provincial Court (Small Claims).

Even if I am wrong, I find the applicant is estopped from enforcing the rights granted to a tenant, as the evidence showed she knew and accepted this living arrangement when moving in and still chose to move in.

Conclusion

I was not satisfied that the Act applies to this living arrangement and I decline to take jurisdiction 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*. Pursuant to

section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 10, 2021

Residential Tenancy Branch