



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNC, PSF, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicant on October 07, 2021 (the “Application”). The Applicant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law
- To recover the filing fee

The Applicant appeared at the hearing with the Advocate and Witness. The Respondents appeared at the hearing. The Witness exited the conference call until required. I did not hear from the Witness during the hearing as the Advocate and Applicant no longer required their testimony. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Advocate and Respondent R.P. provided the correct spelling of the Applicant’s and R.P.’s names and these are reflected in the style of cause.

The Applicant submitted evidence prior to the hearing. The Respondents did not submit evidence. I addressed service of the hearing package and Applicant’s evidence and the Respondents confirmed receipt of these and did not raise any issue with service.

The Applicant withdrew the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

Preliminary Issue – Jurisdiction

An issue of jurisdiction arose at the hearing.

The Respondents took the following position on the jurisdiction issue.

They rent the house the Applicant lives in. The house has five bedrooms, two of which are downstairs. There is only one kitchen in the house and it is upstairs. There are two bathrooms in the house, one upstairs and one downstairs. They have students stay with them. The Applicant contacted R.P. about needing a place to stay. R.P. and the Applicant agreed the Applicant would move into the house temporarily until the Applicant found another place to live. R.P. and the Applicant agreed the Applicant would clean common areas such as the bathroom and kitchenette downstairs. The Applicant only rented a room from the Respondents. Another student lives in the second bedroom downstairs. The Applicant and Respondents share bathrooms and the kitchen. The agreement between the parties is not a tenancy agreement covered by the *Residential Tenancy Act* (the “Act”).

There is only a fridge and sink downstairs and these have been there since the start of the tenancy. The Applicant cooks upstairs in the kitchen. The Respondents use the bathroom downstairs. The Applicant and Respondents share everything.

The Applicant and Respondents had a verbal agreement that the Applicant could move into the house in exchange for rent. The Applicant moved in July 03, 2020. Rent is \$500.00 per month due on the first day of each month. No security or pet damage deposits were paid.

The Applicant and Advocate took the following position on the jurisdiction issue.

There are three bedrooms downstairs in the house. There is a bathroom downstairs in the house. The Applicant has their own kitchen downstairs including a fridge, sink, microwave and portable stove, all of which were there at the start of the tenancy. There is a private entrance to the downstairs suite. The Applicant has understood from the start of the tenancy that they are renting the downstairs suite and the Respondents live upstairs separately. The Respondents do not use the kitchen or bathroom downstairs.

The Applicant never goes upstairs to use the kitchen or bathroom. There is a door between the upstairs and downstairs. The door is not locked but the Applicant could lock it if they wished to.

The agreement between the parties was verbal. The Applicant moved in July 03, 2020. There was no agreement that the tenancy would be temporary. The tenancy is a month-to-month tenancy. Rent is \$500.00 per month due on the third day of each month. No security or pet damage deposits were paid. The agreement between the parties is a tenancy agreement covered by the *Residential Tenancy Act* (the “Act”).

The Applicant and Advocate could not point to any documentary evidence to support their position.

In reply, the Respondents stated that the Applicant is lying and they have never provided a portable stove for downstairs. The Respondents also stated that there is a door between the upstairs and downstairs but there is no lock on it.

I heard the parties on the dispute of a One Month Notice to End Tenancy for Cause and the request for an order that the Landlord provide services or facilities required by the tenancy agreement or law; however, I do not find it necessary to address these issues in this decision given my decision below.

Preliminary Issue – Analysis

Section 1 of the *Act* defines “landlord” as follows:

“landlord”, in relation to a rental unit, includes any of the following...

(c) a person, **other than a tenant occupying the rental unit**, who

- (i) is entitled to possession of the rental unit, and
- (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit...

(emphasis added)

The issue here is whether the Respondents occupy the rental unit being the downstairs suite.

This is the Applicant's application and therefore the Applicant has the onus to prove that the *Act* applies pursuant to rule 6.6 of the Rules.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I am not satisfied based on the evidence provided that the Applicant has proven that the *Act* applies in these circumstances.

The parties gave conflicting testimony about whether they share the upstairs and downstairs of the house.

The Applicant did not submit any documentary evidence, or call any witnesses, to support their position.

I find the testimony of the Applicant that there is a door between the upstairs and downstairs that is not locked supports that the parties share the upstairs and downstairs.

I find the fact that there was no written tenancy agreement done between the parties supports that this is not a tenancy covered by the *Act*.

I find the fact that the Applicant pays only \$500.00 per month for rent supports that the Applicant is renting a room versus an entire downstairs suite. In coming to this decision, I have considered the location of the house and when the Applicant moved in.

I find the fact that no security or pet damage deposits were paid supports that this is not a tenancy covered by the *Act*.

I find the fact that the Respondents attempted to end the tenancy via text message rather than on an RTB form supports that this is not a tenancy covered by the *Act*.

I acknowledge that none of the above factors are determinative as to whether the parties share space or entered into a tenancy agreement covered by the *Act*. However,

I do find that the above factors tend to support that the parties do share space and did not enter into a tenancy agreement covered by the *Act*. More importantly, the Applicant and Respondents gave conflicting testimony about whether they share space and entered into a tenancy agreement covered by the *Act* and the Applicant did not provide further evidence to support their position and thus failed to prove their position. In the circumstances, I find the Applicant and Respondents are roommates and therefore the Applicant has no rights or obligations under the *Act*.

Given the above, I find the RTB does not have jurisdiction to decide the Application. The Application is dismissed without leave to re-apply.

Conclusion

I find the RTB does not have jurisdiction to decide the Application. The Application is dismissed without leave to re-apply.

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: November 05, 2021

Residential Tenancy Branch