



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNR-DR, OPR-DR, FFL
For the Tenant: CNR, OLC

Introduction

On August 5, 2021 the Applicant/Respondent SA disputed the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”). The Applicant/Respondent SA also applied for the landlord’s compliance with the legislation and/or the tenancy agreement.

On September 14, 2021 the Applicant/Respondent SM applied for an order of possession of the rental unit, and recompense of unpaid rent amounts. Additionally, they applied for reimbursement of their Application filing fee. They filed this as a Direct Request; however, this application cannot be considered by that method when there is a prior extant request from the Applicant/Respondent SA in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 9, 2021. Both parties attended the teleconference hearing.

Preliminary Matter – Applicant/Respondent SM service of evidence

The Applicant/Respondent SA stated they delivered notice of this dispute resolution to the SM via registered mail, with SM then confirming they received that document in an email. SA did not provide documentary evidence to SM in advance of the hearing.

The Applicant/Respondent SM provided documents in response to SA’s application. This was via registered mail sent on November 24, delivered to SA on November 29. SA confirmed they received this evidence; however, they questioned the timeliness thereof.

I find this evidence package provided by SM was in response to SA's Application. It was delivered to SA in a timely manner as per the *Residential Tenancy Branch Rules of Procedure*, especially Rule 3.15. I find there is no prejudice to SA with full consideration of this material in this hearing.

SM provided the notice of their Application to SA via registered mail. There is a tracking record in SM's evidence. This included the evidence they prepared for their initial Direct Request procedure application. SA confirmed they received this material from SM.

Based on confirmation from SA that they received all SM's materials for this hearing, the hearing proceeded at the scheduled date and time.

Preliminary Issue - Jurisdiction

The Applicant/Respondent SM provided a copy of the agreement the parties signed on December 20, 2020. This establishes that SA started living at the home on January 1, 2021. The rent amount in the agreement was \$1,850 per month. SA paid a security deposit of \$765. The agreement specifies that the final date of this arrangement is December 31, 2021.

The agreement sets out that "the rental premises is the 2 bedrooms suite on the top floor of [property address]". There will be "only [SA] and [a third party] occupying the room, no other persons shall occupy the room without [SM's] consent." Further:

- [SA] agrees to follow any house rules set for the house.
- To name some: do the dishes before leaving the kitchen
- kitchen hours: 8:30am-10:30pm

A letter from VM, the son of SM, is in SM's evidence, dated November 23, 2021. They identify themselves as the co-owner of the house. Also:

During the year of 2020, [SA] paid [their] room rent 780 to me. My mother, [SM], signed a rental agreement with [SA] to rent 2 rooms on the top floor and pay 1850 starting jan 2021. There are three rooms on the top floor of the house, I occupy one room and there are 2 rooms for rental. [SA] has rented the 2 rooms, sharing dinning [sic], living area with me. Due to my personal reason, I seldom stay in my room at the house. My mother has been using it occasionally.

The *Act* s. 2 sets out what it applies to. That is "tenancy agreements, rental units and other residential property." The *Act* also sets out, in s. 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 my review of the evidence, I find this situation between the Applicant/Respondent SA and the Applicant/Respondent SM is not that of a residential tenancy. Even though there was an agreement for payment of funds on a monthly basis, there was no right to possess a separate rental unit. From the specific instruction to clean dishes, I find the parties shared kitchen facilities as stated in the agreement. Additionally, the individual VM identifies themselves as a co-owner, and they occupied one room in the house.

The *Act* is plain in stating that it does not apply to an arrangement where an occupant shares a kitchen with the owner. Here, the parties shared the kitchen. I find the Applicant/Respondent SA is an occupant, or a roommate.

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 by the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: December 13, 2021

Residential Tenancy Branch