



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC

Introduction

The Applicant filed the Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) for an order that the Respondents comply with the provisions of the *Act*; and an order suspending or restricting the Respondents’ right to enter the unit. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Act* on February 25, 2022. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

Preliminary Issue – disclosure

The Applicant provided documentary evidence in advance for this hearing. They did not disclose this to the Respondents in this hearing process. This is a requirement as per the *Residential Tenancy Rules of Procedure*, particularly Rule 3.1.

Because the Applicant did not provide their evidence to the Respondents, I apply Rule 3.17, and exclude the Applicant’s evidence from consideration. I find it was available to the Applicant at the time they made their Application; however, they chose not to provide it to the Respondents in this hearing, and the Rules require that in the interests of administrative fairness.

The Applicant disputed the Respondent’s timeliness in serving their own set of evidence, quoting a 14-day rule in the hearing. Rule 3.15 of the *Rules* sets time limit for a Respondent’s evidence to be received by the other party, and the Residential Tenancy Branch “not less than seven days before the hearing.”

The Respondents provided service of their material via email to the Applicant on February 15, 2022. This is shown in the email record they provided as proof. This was within 7 days of the hearing as specified in Rule 3.15. I find the Respondents completed service in the manner prescribed by the *Rules*, and their evidence is available for my full consideration herein.

Preliminary Issue - Jurisdiction

The Notice of Dispute Resolution shows the Applicant as the 'Tenant' and the Respondents as the 'Landlord' in this matter. The Applicant explained they were illegally evicted from the Respondents' own home.

The Applicant lived in the basement part of the house that was that of their parents who are the Respondents here. As of the date of this hearing, the home was sold. There is an ongoing Supreme Court action brought by the Applicant here. They moved out from the property in stages between November 2021 and January 2022. The Applicant alluded to compensation for moving expenses due to their forced relocation under difficult circumstances.

In the hearing, the Applicant stated there was no documented tenancy agreement. There was talk of various agreements of offsetting their work done around the household for a nominal rent amount; however, the Applicant stated plainly they did not pay rent and did not pay a security deposit. The basement area in which they lived did not have a separate kitchen area.

In essence, the Applicant submits the *Act* applies to this living arrangement, and the 'Landlord' thus needs to comply with the *Act* and regulations.

The Respondents, via legal counsel, submitted this was an arrangement between them and the Applicant, amounting only to a license to occupy, with no tenancy agreement in place. This was a family relationship, and they gave occupancy to the Applicant here out of generosity. At one point, they had asked the Applicant for \$400 as a rent amount; however, the Applicant never made a payment for this. They referred to s. 4(c) of the *Act* to state this is an arrangement in which the occupant shared the kitchen with the owner.

The *Act* sets out what it applies to in s. 2: "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."

From my consideration of the submissions of both parties, I find the situation is not that of a residential tenancy.

My interpretation of the situation is that the Respondents gave permission to the Applicant to use the basement at their home. This permission was revoked in 2021. At no time was there a tenancy agreement between the parties, either express or implied;

the Applicant did not provide sufficient evidence of this. Additionally, and in the alternative, the *Act* is plain in stating it does not apply to an arrangement where an occupant shares a bathroom or kitchen with the owner.

Based on these facts, and with reference to the *Act*, I do not have jurisdiction to hear this Application.

Conclusion

Having declined jurisdiction to hear this matter, I dismiss this Application in its entirety, without leave to reapply.

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

Dated: February 25, 2022

Residential Tenancy Branch