



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for an order of possession for the rental unit.

The applicant and landlord and an outreach worker for the landlord, SP (Outreach Worker) attended the teleconference hearing. The parties were affirmed. The landlord confirmed that they had been served with documentary evidence by the tenant and that they had the opportunity to review that evidence. The landlord confirmed that they did not submit any documentary evidence in response to this application. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The hearing process was explained and the parties were given an opportunity to ask questions. This decision will refer to only the relevant testimony related to the matter(s) before me.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution 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, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Pursuant to section 64(3)(c) of the Act, the rental unit address was corrected by removing reference to A and B, as the parties agreed that the home does not have A and B listed on the home. As a result, the rental unit was changed to reflect “lower” only.

As jurisdiction was raised, I will first determine if the Act applies to this living arrangement.

Issue to be Decided?

- Does the Act apply to this living arrangement?

Background and Evidence

During the hearing, the parties agreed that in lieu of \$1,000.00 in monthly rent, the tenant was working 30 hours at the rental property home, which the parties agreed was a work in exchange for rent agreement. There was no signed tenancy agreement submitted in evidence. This arrangement was a verbal agreement.

The parties agreed that the tenant uses the bathroom and kitchen of the upper portion of the home. The landlord confirmed that they occupy the upper portion of the home. The tenant states they were residing in the lower portion of the home. The parties agree that there is no kitchen, bathroom or stove in the lower portion of the home.

The tenant is seeking an order of possession for the lower portion of the home and states that their personal belongings are still there. The tenant also stated that he is currently working in Alberta but plans to return to BC.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 4(c) of the Act applies and states:

What this Act does not apply to

4 This Act **does not** apply to

(c) living accommodation in which **the tenant shares bathroom or kitchen facilities with the owner of that accommodation,**

[emphasis added]

Based on the above, I find the Act does not apply to this living arrangement as I accept the undisputed testimony of the parties that the landlord owns the entire home, that the landlord lives in the upper portion of the home and that the tenant has shared the kitchen and bathroom with the landlord.

Based on the above, I refuse jurisdiction to hear this dispute as I find the Act does not apply to this living arrangement.

Conclusion

The application has been refused due to lack of jurisdiction pursuant to section 4(c) of the Act.

The Act does not apply to this living arrangement.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 22, 2022

Residential Tenancy Branch