



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, AAT, MNDCT, RR, PSF, OLC, LRE

Introduction

The Applicant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order pursuant to s. 49 cancelling a Two-Month Notice to End Tenancy signed on May 19, 2022 (the “Two-Month Notice”);
- An order under s. 70 to allow the Applicant access to the rental unit for them or their guests;
- A monetary order pursuant to s. 67 for compensation for loss or other money owed;
- An order pursuant to s. 65 for a rent reduction;
- An order pursuant to s. 65 for the Respondent to provide services or facilities;
- An order pursuant to s. 70 restricting the Respondents right of entry into the rental unit; and
- An order pursuant to s. 62 that the Respondents comply with the *Act*, Regulations and/or the tenancy agreement.

J.W. appeared as the Respondent. She was joined by her father, J.W., who I am told is the property owner.

T.C. also appeared as assistant and translator on behalf of J.W. and J.W.. T.C. certified that he had knowledge of Mandarin and was able to translate English to Mandarin, and vice versa, on behalf of the Respondent.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Applicant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Preliminary Issue – Jurisdiction

At the outset of the hearing, I attempted to clarify with the Respondent the nature of the rental arrangement. The Applicant's pleadings list the rental unit as a room within the property and the Two-Month Notice lists the rental unit address as the same address for the Landlord.

J.W. advised that her father is the owner of the property and that she and her husband are named as the respondents. I was advised that J.W., her husband, and her father all reside in the same property. The property was described as having three floors, a main floor and upstairs constituting the main portion of the property and a separate basement suite. At the outset, the Applicant was described as renting a room within the basement suite. However, during the hearing the Respondent clarified that the Applicant rented a room in the main portion of the property that was shared with her, her husband, and her father. The Respondent also stated that her child also lives with them and that she and her husband are expecting a new child.

Section 4 of the *Act* specifies arrangements in which the *Act* does not apply. It is clear under s. 4(c) that the *Act* does not apply to "living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation".

I asked whether the Applicant shared the kitchen with the owner. The Respondent denied this was the case. I was further advised that the Applicant had his own bathroom, which is an ensuite for the room. The Respondent advised that there is not written tenancy agreement.

It is not clear to me how the Applicant would not share a kitchen with the owner, who in this instance is the father J.W.. Though there may be an understanding that the Applicant is not to use the kitchen, the purported rental unit is a room within the main portion of the property, all of which is common space shared with the owner. The owner and the Applicant, in effect, share occupancy of the main portion of the house. Indeed, the room is only accessible through the main portion of the house.

I find that the Applicant shares a kitchen with the owner and that the main portion of the house is a shared accommodation with the owner. As such, s. 4 of the *Act* specifically prohibits the application of the *Act* in these circumstances. Accordingly, I find that I do not have jurisdiction to adjudicate this dispute and the claims are dismissed on this basis.

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*.

Dated: July 08, 2022

Residential Tenancy Branch