



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL, FFL

Introduction

On June 14, 2022, the Applicant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Applicant attended the hearing. The Respondent attending the hearing as well, with M.B. attending as an advocate for the Respondent. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Applicant advised that he served the Respondent with the Notice of Hearing package and some evidence by email on July 23, 2022, pursuant to a Substituted Service Decision dated July 19, 2022. The Respondent confirmed that she received this package. As such, I am satisfied that the Respondent was sufficiently served with the Notice of Hearing package and some evidence. Moreover, I have accepted this evidence and will consider it when rendering this Decision.

The Applicant then advised that he served additional evidence to the Respondent by email, and he was not sure of the exact dates that he did this. However, it was likely on or around the same dates that this evidence was uploaded to the file. Moreover, he attempted to amend his Application on March 27, 2023. The Respondent advised that she only received some of this evidence, but regardless, as it was served late, M.B. stated that it would be too late to respond to. As this evidence was served late, and as this Amendment was attempted late, I am not satisfied that the Applicant has complied with Rules 3.15 or 4.3 of the Rules of Procedure (the “Rules”). As such, I have excluded

the Applicant's late evidence and will not consider it when rendering this Decision. Moreover, I have rejected the Applicant's amendment as well.

M.B. advised that she served the Respondent's evidence to the Applicant by registered mail on or around March 14, 2023, and the Applicant confirmed that he received this on or around March 16, 2023. Based on this undisputed testimony, as this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, I have accepted all of the Respondent's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Applicant entitled to a Monetary Order for compensation?
- Is the Applicant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Applicant advised that the tenancy started on September 1, 2021, as a fixed-term tenancy of one year ending on August 31, 2022; however, the tenancy ended when the Respondent gave up vacant possession of the rental unit on July 1, 2022, after being served a 10 Day Notice to End Tenancy for Unpaid Rent. Rent was established at an amount of \$1,625.00 per month, and was due on the first day of each month. As well, neither a security deposit nor a pet damage deposit was paid. He testified that he did not ask for either as he was attempting to make life easier for the Respondent. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

He then testified that the Respondent moved in in July 2021 as the previous tenants moved out early, and he stated that the Applicant did not pay rent for July or August 2021 because of it. When he was asked why the dispute address and his own address on the tenancy agreement were the same, he indicated that this was an oversight.

M.B. advised that the Applicant and Respondent were boyfriend and girlfriend, that they moved into the property together, that they shared a kitchen and bathroom, and that both their families lived together in the entire house. She stated that there was no bedroom downstairs for the Respondent.

The Respondent then advised that she moved into the upstairs bedroom of the property with the Applicant in July 2021, that they then went on a trip to Europe together, and that she came back a week earlier than the Applicant and settled into the home upstairs. She testified that she lived with the Applicant upstairs until there was a breakdown of their relationship in June 2022.

When the Applicant was questioned about the nature of this habitation, he confirmed that he was the owner of the property and that he shared the bedroom upstairs with the Respondent. He then continually attempted to advance the argument that the basement was a self-contained unit and that he never shared the kitchen or bathroom downstairs. However, he would not acknowledge whether or not the Respondent shared the kitchen or bathroom upstairs. Although, he attempted to suggest that the Respondent and her family were routinely invited upstairs to eat or share space.

When he was asked if the Respondent shared the bedroom with him, he would not answer straightforwardly, and while he eventually conceded that the Respondent did sleep in the same bed with him, it was clear that he was attempting to downplay the frequency that this happened as he would not provide an estimate of how regularly this occurred.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that the Applicant owned the property, and while he attempted to portray this scenario as a tenancy under the *Act*, I do not find the Applicant to be credible whatsoever. Firstly, I note that the tenancy agreement and the 10 Day Notice to End

Tenancy for Unpaid Rent both indicate that the Applicant's address and the Respondent's address are the same. While I accept that this could be perceived as an oversight by the Applicant, given the following questionable behaviours and testimony by the Applicant, I find that I am suspicious of the legitimacy of such.

Once the Respondent testified that she was in a relationship with the Applicant and that she shared the upstairs bedroom with him, the Applicant was asked for his submissions regarding this, and he was clearly and intentionally being vague and evasive, instead of forthright. He would specifically emphasize that he did not share the kitchen or bathroom downstairs with the Respondent, and he would suggest that if the Respondent used the kitchen or bathroom upstairs, it was only because she was an invited guest. When he was asked specifically to make submissions on the Respondent's testimony that she lived in the upstairs' bedroom with him from July 2021 to June 2022, he would avoid answering this directly, and stated that he could not remember how many times she slept in that room with him.

I find the Applicant's wavering testimony to be particularly revealing because generally a Landlord under the *Act*, when renting out a separate self-contained rental unit, would not ordinarily share a bedroom together with their Tenant. This is inconsistent with common sense and ordinary human experience. In addition, this behaviour is also inconsistent with his past interactions when he rented out to others, as he never permitted a Tenant on any other tenancy agreement to share the upstairs bedroom with him.

Given that he had never done this with any of his Tenants, I find it reasonable to conclude that this unusual situation with the Respondent would likely be particularly noteworthy, and that the Applicant would have some recollection on the estimated number of times this happened.

While the Applicant would not reveal the number of times this occurred, it is not the specific number of times that is crucial here, as this was clearly more than a one-time occurrence based on the Applicant's intentionally vague testimony. Given the inconsistencies in the Applicant's documents, and the manner with which the Applicant was clearly attempting to provide misleading testimony, or neglecting to answer questions directly, I find that these issues cause me to doubt the credibility and reliability of the Applicant on the whole. As such, I prefer the Respondent's testimony and I give it more weight.

Based on the frequency with which the Respondent spent in the upstairs bedroom, I can reasonably infer then that it would be more likely than not that the Respondent would have also been sharing at least the bathroom, if not the kitchen as well, with the Applicant.

I also find it important to note that towards the end of the hearing, the Applicant

suggested that when the parties stopped communicating in or around May or June 2022, that the tenancy would have then begun because it appeared as if the parties possibly severed their relationship and retired to their respective spaces on the property. Clearly, this submission would then support a conclusion that prior to the breakdown of their relationship, it was not his belief that this was a tenancy under the *Act* at all, and that they lived in the property together. Given that this is contrary to his earlier testimony that there was always a tenancy established and that they had separate living spaces, I find this further contributes to a conclusion that the Applicant's credibility is sorely lacking. In my view, I find that this further demonstrates the Applicant's attempt at deeming this a tenancy, when convenient for him, after this relationship soured. Despite his attempts to dress this situation up like a tenancy under the *Act*, this was evidently anything but.

Considered in its totality, I find the Applicant to be a less credible witness than the Respondent. The Applicant was evasive, he provided inconsistent, illogical testimony, and he would continually attempt to steer questioning in a direction that would not reveal the actual particulars of this living situation. I did not find the Applicant's testimony to be compelling, persuasive, or truthful. It was obvious that the Applicant was attempting to advance a false narrative, and portray a scenario that simply did not exist.

When reviewing the testimony of the parties, it was evident that they were in a personal relationship, and that they did not have an intention to engage in a true tenancy as contemplated under the *Act*. It is clear that both parties acted casually during the relationship, but since the deterioration of that relationship, the parties no longer were amicable, and the Applicant is now attempting to seek formal resolution for the concessions that were made when they were in the relationship. However, based on the evidence and the testimony of the parties, I find that there was no formalized Landlord/Tenant relationship established as they were in a relationship that extended beyond the purview of the *Act*.

Section 4(c) of the *Act* states that "this Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation."

In my view, after hearing testimony from both parties, I am satisfied that the Respondent owned the property. As well, I find that both the Applicant and Respondent did have access to and did share the bathroom and/or kitchen on the property. As Section 4(c) of the *Act* stipulates, the *Act* does not apply in situations where a tenant shares a bathroom or kitchen facilities with the owner of the accommodation. Consequently, I find that even if the parties intended upon entering into a tenancy agreement as contemplated under Section 1 of the *Act*, the *Act* would not apply to this tenancy. Therefore, I have no jurisdiction to render a Decision in this matter.

As the Applicant was not successful in this Application, I find that the Applicant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this Application.

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: March 29, 2023

Residential Tenancy Branch