



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ERP

Introduction

This hearing dealt with an application filed pursuant the *Residential Tenancy Act* (the "Act") for An order for emergency repairs to be done to the rental unit pursuant to section 33.

Both the applicant and the respondent attended the hearing. The respondent acknowledged service of the applicant's Notice of Dispute Resolution Proceedings package and the applicant acknowledged service of the respondent's evidence.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

In his evidence package, the respondent provided submissions that he lived in the rental unit with the applicant, sharing a kitchen and a bathroom.

The respondent testified that he is the owner of the rental unit, a single family house. There is a rental unit downstairs, however he lived in the 3 bedroom upper unit with the tenant, sharing a kitchen and a single bathroom. There is just the two of them there and there is no occupant in the third bedroom. The reason the respondent received the Notice of Dispute Resolution Proceedings at a different address is because that address is where his daughter lives. He goes to visit her there on weekends.

There was an event at the rental unit on February 7th. The applicant was taken away by the police and released with conditions he not return to the rental unit. The applicant has not returned to the unit since being released by the police.

The landlord's daughter gave the following affirmed testimony. Her father lives at the rental unit with the applicant. She does not visit him regularly at his house but will attend to help with yard work. Her father shares the kitchen and bath with the applicant.

The applicant testified that the respondent is lying. The respondent is on title at the daughter's house and the applicant found that address by doing a title search. The respondent does not live in the rental unit during the time he was there. He just lives in one of the 3 bedrooms and does not know the form of the house. He just uses the kitchen and bathroom and at first stated nobody else lives in the house. Later he says he may have seen 2 other tenants. They seemed to be students. No other information about the other occupants was provided, although I asked the applicant to describe them and give a description of them.

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

Based on the testimony of the parties, I find that the respondent is the owner of the rental unit and that the owner of the rental unit shared a kitchen and bathroom with the applicant. I find the applicant evasive and vague on describing his living situation and only mentioned the other occupants of the rental unit when I asked if he occupied the 3-bedroom unit by himself. Conversely, I find the respondent and his daughter provided a logical explanation as to why the Notice of Dispute Resolution Proceedings was received at the daughter's residence. I also find their testimonies were consistent in stating the respondent occupied the rental unit with the applicant.

Based on my finding that the parties shared a kitchen and bath, I find the Residential Tenancy Act does not apply to this rental unit. Consequently, I decline the jurisdiction to render a decision in this matter.

Conclusion

I decline to hear this matter further 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 20, 2023