



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MT, CNL, MNDCT, PSF, LRE, LAT, OLC, FFT

Introduction

On February 13, 2023, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking more time to cancel a notice to end tenancy and to cancel a Two Month Notice to End Tenancy for Landlord Use of Property dated January 26, 2023 (“the Two Month Notice”). The Tenant also applied for the following relief:

- For monetary compensation for damage or loss under the Act.
- to suspend or set conditions on the Landlord’s right to enter the rental unit.
- for an order regarding locks and access to the unit.
- For an order for the Landlord to provide services or facilities.
- for an order that the Landlord comply with the Act, regulation, or tenancy agreement.

The matter was set for a conference call hearing. The Landlord and the Tenant appeared at the hearing.

The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. Both parties confirmed that they have exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord identified that his name is incorrectly spelled in the Tenant's application. The Tenant agreed to amend his application to the correct spelling of the Landlord's name.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending based on the service of the Two Month Notice. The Tenant's other claims were dismissed with leave to reapply.

Jurisdiction

The Landlord and Tenant testified that the living arrangement/ tenancy began approximately one year ago and is on a month to month basis. The Landlord stated that the tenancy began in November 2021. The monthly rent was initially \$650.00 but was apparently raised to \$750.00 by consent of both parties and is due to be paid to the Landlord by the first day of each month. The Tenant stated he paid a \$100.00 security deposit. The Landlord replied that the \$100.00 that the Tenant paid is for a key deposit.

The rental unit is located in the Landlords home and the Tenant rents a bedroom and shares common areas with another occupant.

The Landlord and Tenant were asked whether or not they share a kitchen or bathroom. The Landlord testified that there is a bathroom within the rental unit; however there is no kitchen facility. He testified that the living arrangement is that the Tenant and other occupant living in the unit have use of the Landlords kitchen. He stated that the Tenant and other occupant have been provided a key to access the Landlord's unit, in order to use the kitchen and/or laundry. The Landlord stated that the other occupant uses the Landlord's kitchen; however the Tenant has not come up to use it and has a hot plate set up in the rental unit.

The Landlord takes the position that the *Act* does not apply to the living arrangement and that the arrangement is based on a verbal agreement between the parties. The Landlord stated that the Tenant begged to stay living in the unit and proposed a rent

increase and agreed to the rent increase. The Landlord did not prepare a written tenancy agreement.

The Tenant testified that he shares the rental unit with another occupant and that they share a bathroom. The Tenant confirmed that he received a key from the Landlord to access the Landlord's unit. He stated that the key is to access laundry. He confirmed that there is no kitchen in the rental unit and he stated that he has been using a hot plate downstairs.

Analysis

Section 4 of the Act provides that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

The Landlord and Tenant provided testimony in agreement that the rental unit does not contain a kitchen. The Landlord and Tenant agreed that the Tenant was provided a key to access the Landlord's unit. I accept the Landlord's testimony that the other occupant uses the Landlord's kitchen. I find that it is more likely than not that the living arrangement provides the Tenant with access to share the Landlord's kitchen. While I acknowledge that the Tenant has not been using the kitchen, he is free to do so, and his reluctance does not change the terms of the agreement between the Landlord and the Tenant. I find that the terms of the living arrangement are that the Landlord and Tenant share a kitchen.

I only have authority to consider disputes that arise under the Act, or the tenancy agreement. Pursuant to section 62 (4) of the Act, the director may dismiss all or part of an application for dispute resolution if the application or part does not disclose a dispute that may be determined under this Part.

I find that the parties share a kitchen and the Act does not apply to this living arrangement. I decline jurisdiction to hear the matter. The Tenant's Application is dismissed.

The Tenant's application which includes a request for more time to cancel a notice to end tenancy and to cancel a Two Month Notice to End Tenancy for Landlord Use of Property dated January 26, 2023 is dismissed in its entirety.

The Two Month Notice to End Tenancy for Landlord Use of Property dated January 26, 2023 is cancelled.

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 14, 2023

Residential Tenancy Branch