



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDP-DR, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants November 30, 2022 (the “Application”). The Tenants applied:

- For return of the security deposit
- For reimbursement for the filing fee

This was a review hearing of a Decision issued January 26, 2023.

The Tenant appeared at the hearing with Legal Counsel. The Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant and Landlord provided affirmed testimony.

There were no service issues between the parties.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to return of the security deposit?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

Jurisdiction

The Landlord raised the issue of whether the *Residential Tenancy Act* (the “*Act*”) applies given section 4(c) which states that the *Act* does not apply when parties share bathroom or kitchen facilities.

The Landlord provided the following testimony and submissions. The Landlord owns the house at issue. The Tenants previously rented a basement suite in the Landlord’s house. The Tenants were going to move into the Landlord’s part of the house and rent a theatre room and downstairs bedroom. The parties were going to share a kitchen, bathroom and front door. The Landlord took a \$1,000.00 security deposit for the Tenants renting space in the Landlord’s house. The *Act* does not apply because the parties were going to share bathroom and kitchen facilities. The Tenants never ended up moving into the Landlord’s house.

In relation to a written tenancy agreement in evidence, the Landlord said the Tenants needed papers about where they were renting and so the Landlord signed the agreement.

The Tenant and Legal Counsel provided the following testimony and submissions.

The Tenants lived in a basement suite in the Landlord’s house from 2019 to October of 2022. The Tenants were going to move and gave notice. The Tenants could not move as planned. The Tenants knew the Landlord had another part of their house that was not a suite and asked to stay in the Landlord’s house for a few months, which the Landlord agreed to. The space was shared. There was confusion about what would be included in the shared space. An issue arose about how long the Tenants could stay in the space and the Tenants ended up telling the Landlord the arrangement would not work. The Tenant did not understand the difference between a shared arrangement and a rental unit. The *Act* might not apply.

There was no kitchen in the shared space; however, the Landlord told the Tenants they could not use the Landlord’s kitchen. The Tenant did not understand that they could use the Landlord’s kitchen and were given one hot plate in the garage to use. There was no conversation between the parties about use of bathrooms. The Landlord told the Tenant they would not go in the space rented out to the Tenants. There was no

door between the Landlord's house and space to be rented by the Tenants. There was a storage room in the space that the Landlord had access to.

In reply, the Landlord denied the Tenant's statements about a hot plate and said the Landlord used the garage.

The only documentary evidence before me that is relevant to the jurisdiction issue is a written tenancy agreement between the parties.

Decision - Jurisdiction

Section 4(c) of the *Act* states that the *Act* does not apply to living accommodation where the tenant and owner share bathroom or kitchen facilities.

This is the Tenants' Application and therefore the Tenants must prove the *Act* applies (see rule 6.6 of the Rules).

I am not satisfied based on the evidence provided that the *Act* applies to the parties given section 4(c) of the *Act*. I find it clear from the testimony and submissions of the parties that the Tenants rented rooms in the Landlord's own house and not a separate suite. I find from the testimony and submissions of the parties that the agreement was for shared accommodation where the parties had access to each other's living space. The parties disagreed about whether they were going to share a kitchen. There was only one kitchen in the house. I am not satisfied based on the evidence provided that the Tenants were not allowed to use the Landlord's kitchen.

I find section 4(c) of the *Act* applies. The RTB does not have jurisdiction to decide the Application. The Decision issued January 26, 2023, is set aside. The Application is dismissed without leave to re-apply.

Conclusion

The Decision issued January 26, 2023, is set aside. The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 17, 2023

Residential Tenancy Branch