



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC, OLC, FFT**

Introduction

This hearing dealt with the Applicant's application pursuant to the *Residential Tenancy Act* (Act) for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") under Sections 47 and 62 of the Act;
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement under Section 62(3) of the Act; and,
3. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Applicant attended the hearing at the appointed date and time and provided affirmed testimony. The Respondent did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Applicant and I were the only ones who had called into this teleconference. The Applicant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Applicant that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. The Applicant testified that he was not recording this dispute resolution hearing.

The Applicant testified that he personally served the Landlord with the Notice of Dispute Resolution Proceeding package which was issued to the Applicant for this hearing on March 21, 2023 (the "NoDRP package"). The Applicant said he uploaded a proof of service, which I did locate. I find that the Respondent was sufficiently served with the NoDRP package on March 24, 2023, in accordance with Section 71(2)(b) of the Act.

Issue to be Decided

Is there jurisdiction to decide the Applicant's claims?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Applicant confirmed that this tenancy began as a fixed term tenancy on September 1, 2022. At the end of the first fixed term, the Applicant asked the Respondent for a second fixed term which began on March 1, 2023, and was to end on May 31, 2023. Monthly rent was \$1,075.00 payable on the first day of each month. A security deposit of \$500.00 was collected at the start of the tenancy and was returned at the at the end of the contract.

The Applicant explained that he and the Respondent lived in the same rental unit. I asked the Applicant if they shared bathroom and kitchen facilities, and he confirmed this.

When I explained because they share bathroom and kitchen facilities, that the Act does not apply to the matter, the Applicant backtracked and said he did not state this, he had his own bathroom, and he was not permitted to use the kitchen.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

What this Act does not apply to

4 *This Act does not apply to*

...

(c) *living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,*

The Applicant initially testified that he shared bathroom and kitchen facilities. After reading Section 4(c) of the Act to him, he backtracked on his verbal evidence. I find the Applicant did not have exclusive possession of the accommodation, so I find that the living accommodation the Applicant and Respondent shared are not covered under the Act, and I do not have jurisdiction to decide this claim.

The Applicant is free to seek his remedy elsewhere.

Conclusion

I do not have jurisdiction to decide this claim.

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 30, 2023

Residential Tenancy Branch