

DECISION

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act
- a Monetary Order for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 or 51.4 of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

Both parties appeared.

The first issue I must determine is whether the Residential Tenancy Act applies to this matter as the Applicant was living in the owner's home and rented a room.

The advertisement filed in evidence shows the Respondent was looking for a female student to share the accommodations with the female homeowner and 1 student. The advertisement does not give the Applicant exclusive possession of the kitchen or bathroom; however, there is a designated student living room and dining room.

The Applicant stated they rented a room in the owner's house and their bedroom is on the upstairs floor which is by the owners and the owners child's bedroom. The Applicant stated that the owner and the owner's child have their own bathroom ensuite; and they shared the hallway bathroom with the other occupant who rented a different room. The Applicant stated that they also had the use of their own kitchen, and the landlord has a separate kitchen.

The Respondent stated that they rented a room in the house to a student. The Respondent stated that the hallway bathroom was for the Applicant to use; however, it

was not for their exclusive use as this is the main bathroom for the house and can be used by anyone in the household and any guests.

The Respondent stated that there are two kitchens in the house; however, the main kitchen is the spice kitchen where most of the cooking is done to contain the smells of spices and oils and where the kitchen appliances are stored. The Respondent stated that the Applicant did not have exclusive possession of the kitchen as this could be used by everyone in the household. The Respondent stated that they had full access to the spice kitchen, and it is stocked with all their own spices and their kitchen small appliances.

In this case, the Applicant was a student and rented a room within the owner's house and the advertisement is very clear that this was a shared accommodation. The kitchen and bathroom are not shown in the advertisement for the Applicants exclusive use.

I am not satisfied that the Applicant had exclusive possession of the bathroom. While it may have been for their primary use since this was the only full bathroom available to the Applicant; however, this is the main bathroom for the premises and available for anyone to use if needed, this would include the Respondent, the Respondents child and any other guest.

I accept there may be two kitchens on the premises; however, the Applicant was not given exclusive possession of the spice kitchen, which is directly off the kitchen area and opens on two sides. This is a shared space. The cabinets are full of the landlord's spices which would not be typical if this was for the Applicants exclusive use.

Based on the above, I find the Act does not apply to this matter. Therefore, for I decline justification.

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: August 15, 2023

Residential Tenancy Branch