

DECISION

Introduction

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

- 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

The hearing also dealt with the Respondent's Application for Dispute Resolution under the Act for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Applicant AV and her translator and witness HT attended the hearing.

Respondent HC and her translator LS also attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that AV is deemed served on August 25th, 2024, by registered mail, the fifth day after the registered mailing. The Applicant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

I find that HC is deemed served on August 16th, 2024, by registered mail, the fifth day after the registered mailing. The Applicant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

Preliminary Matters

In order for me to have jurisdiction over this claim, I must find that the Act applies.

HC submitted that the dispute is outside the jurisdiction of the *Residential Tenancy Act* and thus, outside of my jurisdiction. She cited section 4(1)(c) of the Act, which provides that the Act does not apply where “the tenant shares bathroom or kitchen facilities with the owner of that accommodation.”

HC testified that she and her son are the legal owners of the residential property. She agreed to rent a room to AV for \$1,000 per month; that room was on the lower floor, outside the kitchen. HC herself lives in the house, and her bedroom is on the upper floor and has an ensuite bathroom.

HC testified that the main floor only has one washroom. She was going to rent a room next to the kitchen to AV, and that all public rooms were going to be shared, including the kitchen. She testified that there is one kitchen, but there is another area outside the kitchen area where you can prepare food. She testified that the utensils and refrigerator would be shared in the kitchen.

AV testified that she had visited the rental property, and that it had a separated kitchen for the tenants. She testified that she would share a bathroom with another girl. She submitted that an addendum to the tenancy agreement indicated that she would only be allowed to use the separated kitchen. AV testified that the separated kitchen had its own oven; and that the larger kitchen had its own oven.

HC testified that she is currently sharing the kitchen with a classmate of AV, including utensils, pots, and kettles.

Clause 5 of the Addendum reads as follows:

All tenants can only use the side kitchen and need to buy kitchen supplies and tableware by themselves, and only the designated refrigerator and cabinets can be used to store items. Man-made damage to furniture, electrical appliances, and other items requires compensation. Please use the stove within 1 hour, clean up in time for use for taking care of others conveniently.

While this clause suggests a significant division between the tenants’ use of the kitchen and that of HC, it does not exclude a significant shared use. There is no indication that the tenants would have had to use a separate sink, for instance. The terms “kitchen supplies and tableware” are somewhat vague, and I would not read them to exclude the sharing of some pots and utensils, as testified to by HC.

In addition, I accept HC’s testimony that when she watches TV on the main floor, she uses the main floor bathroom. That usage makes sense when HC’s ensuite washroom is on a different floor.

I find that the Applicant and the Respondent owner HC would have shared the kitchen facilities and a bathroom in the rental property.

As a result, I find that the Act does not apply to either dispute and that I consequently have no jurisdiction to proceed.

Conclusion

I decline to proceed due to a lack of jurisdiction.

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: November 23, 2024

Residential Tenancy Branch