



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, OPC, OPB, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 66; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the landlord handed the tenant a 1 Month Notice to End Tenancy for Cause (the Notice) on March 23, 2011. The parties agreed that the tenant handed the landlord a copy of her dispute resolution hearing package on March 28, 2011. The tenant said that on April 8, 2011 she received a copy of the landlord's application for dispute resolution that the landlord posted on her door on April 7, 2011. I am satisfied that the parties served one another with these documents in accordance with the *Act*.

Since the tenant was within the time limit for applying for dispute resolution, there was no need for her to obtain an extension of time to make her application for dispute resolution. As such, her application for more time to apply was withdrawn at the hearing.

Issues(s) to be Decided

Do I have jurisdiction under the *Act* to consider these applications for dispute resolution?

Background and Evidence

This tenancy commenced on July 22, 2010. Monthly rent is set at \$425.00, payable when the tenant receives her monthly cheque from a government ministry. The landlord continues to hold the tenant's \$212.50 security deposit paid on July 22, 2010.

The landlord entered into written evidence a copy of his Notice and the one page tenancy agreement he and the tenant signed on July 22, 2010. In that agreement, the parties committed to rent "a furnished, lockable room in a house" to the tenant who "agrees to the following conditions to maintain a single...room which shares bath, kitchen & laundry with other like tenants and the landlord." The agreement also included a provision that the landlord would make available soaps & cleaning supplies, garbage bags and toilet paper. These provisions were initialled by the tenant.

The landlord gave undisputed sworn testimony that he maintains one of the six rooms in this rental property which he and his daughter who assists him with the maintenance of this property use. Although he said that he does not cook in the rental property in the shared living accommodations on an ongoing basis, he said that he and his daughter do use the shared bathroom in this rental property.

Analysis

Section 4(c) of the *Act* reads in part as follows:

- 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 oral and written evidence of the landlord and the tenant is that the tenant rented premises which share the bathroom and kitchen facilities with the other tenants and the landlord.

I find that the undisputed evidence shows that the rental unit has been provided to the tenant as living accommodation that shares bathroom facilities with the owner and other tenants in the building. Kitchen facilities are also shared with the owner, but to a lesser extent. The oral testimony of the parties, the written evidence in their tenancy agreement, and the landlord's assumption of costs for cleaning supplies, garbage bags and toilet paper indicate that the landlord does in fact share both the use and the cost of maintaining the bathroom facilities in this rental property. The landlord testified that the tenant's alleged inability to properly clean up after her use of the shared bathroom (toilet facilities) is the reason that prompted him to issue the Notice and application for dispute resolution.

Under these circumstances and based on the evidence before me, I find that the *Act* does not apply to this tenancy. I therefore have no jurisdiction to render a decision in this matter.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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*.