



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord return the tenant's personal property; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing. Each gave affirmed testimony and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to question each other with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the issue of jurisdiction was raised, which is addressed in this Decision.

Issue(s) to be Decided

- Does the *Residential Tenancy Act* apply to this dispute?
- If the *Residential Tenancy Act* applies to this dispute;
 - has the tenant established a monetary order as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
 - Has the tenant established that the landlord should be ordered to return the tenant's personal property?

Background and Evidence

The tenant testified that this month-to-month tenancy began on August 1, 2013 and ended on September 12 or 13, 2015. Rent in the amount of \$700.00 per month was payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The rental unit is half of a duplex with other tenants residing in it, the landlord's office space in it, and other rental office space. The tenant rented the 2 garages. One of the garages is heated which is the one that the tenant inhabited. The garages do not have bathrooms or kitchens, but the tenant had access to both inside the main building.

The tenant further testified that on September 2, 2015 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. The tenant testified that the tenant found the notice laying on the kitchen table. The notice is dated September 2, 2015 and contains an effective date of vacancy of September 12, 2015 for \$800.00 of unpaid rent that was due on September 1, 2015, and also states that the tenant paid \$700.00 on September 1, 2015. The tenant talked to the landlord stating that the rent increase was too much.

The landlord had left a Notice of Rent Increase on the kitchen table as well in May, 2015 which increases rent effective September 1, 2015 to \$800.00 per month. A copy of that notice has also been provided. The tenant paid the \$700.00 for September and told the landlord she could not raise it.

The tenant had changed the lock to an interior door that gives access to the garage from the common kitchen because the landlord went into the tenant's rental unit without notice to the tenant. The landlord sent a locksmith to the rental unit on September 13, 2015 and changed the locks while the tenant was there.

The tenant ordered a Big Steel Box on September 11, 2015 and has provided a copy of the invoice. The tenant moved out his belongings and the landlord changed the locks. The tenant's dryer is still in the basement, which the tenant seeks to have returned.

The tenant also claims pro-rated rent for September, 2015 be returned to the tenant, along with the security deposit, \$625.00 for labor costs for moving, \$410.83 for rental of the Big Steel Box and recovery of the filing fee, due to the landlord's failure to comply with the *Residential Tenancy Act* by locking the tenant out of the rental unit and requiring the tenant to move out without cause.

The landlord told the tenant that the *Residential Tenancy Act* does not apply because it's shared accommodation with the landlord and other office people, but the tenant was the sole person living in that unit. The landlord had a separate residence when the tenant lived there.

The landlord testified that the Residential Tenancy Branch explained that since the tenant shares kitchen and bathroom with the landlord, the *Residential Tenancy Act* does not apply. The landlord was at the rental property working in an office every day during the week from 8:00 a.m. to 4:00 p.m. until moving into the building on June 21, 2015.

The rental unit is a 2 bedroom suite above a garage and all utilities are in that unit, such as the panel box and hot water tank. It's not a self-contained unit because it has no kitchen or bathroom, but is carpeted and heated with windows. The tenants that have resided there set up a bedroom and living room area and share the laundry, bathroom, kitchen and sometimes the main living room area. Originally, the landlord's business partner lived there and commuted from another City, and it's been rented that way ever since. The tenant was well aware at the beginning of the tenancy that the landlord had a business that operates out of the main building and that the kitchen and bathroom are shared with the landlord, the landlord's business and others.

The landlord sold her residence, and told the tenant that she could no longer afford to pay all of the utilities. The tenant said that he understood and the landlord never heard any objection until the tenant failed to pay it on September 1, 2015.

The landlord raised the rent using the form provided by the Residential Tenancy Branch. She also used the forms for the tenancy agreement and the notice to end the tenancy and later learned that the *Act* didn't apply so crossed out some things on the forms.

The locks were changed on September 12, 2015. The tenant didn't have all of his belongings out so the parties made arrangements for the tenant to retrieve them. At no point after that did the tenant mention any other items left there. The tenant had been given a dryer that he thought was better than the one that was in the rental building, so he moved it in and told the landlord to move the old one out and the landlord didn't question it. The tenant can have the dryer.

Analysis

The *Residential Tenancy Act* states, in part:

- 4 This Act does not apply to

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

Whether the landlord resides in the accommodation is not specified, only that the tenant shares either of the rooms with the owner. In this case, the landlord testified that she was there and used those facilities from 8:00 a.m. to 4:00 p.m. on business days and the tenant did not dispute that. The landlord testified that she moved in on June 21, 2015.

In the circumstances, I find that the tenant shared the bathroom and kitchen facilities with the owner of the rental unit, and I decline jurisdiction to decide the merits of this matter.

Conclusion

For the reasons set out above, I hereby decline jurisdiction with respect to the tenant's 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*.

Dated: December 04, 2015

Residential Tenancy Branch

