Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Applicant under the *Residential Tenancy Act* (the "*Act*"), seeking:

- compensation for damage or loss under the *Act*, regulation, or tenancy agreement;
- Return of a security deposit and a pet damage deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Applicant, the Applicant's father, who acted as a support person in compliance with rule 6.7 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"), and the Respondent. All parties provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Both parties attended the hearing on time and neither party raised any concerns regarding the service of the Application or the Notice of Hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the parties copies of this decision will be e-mailed to them at the e-mail addresses confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing it came to my attention that there were several persons present in the hearing who were not parties to this dispute and were in fact, calling in on another unrelated file and matter. I advised the persons who were present on the conference call but not parties to this dispute that although they had originally been scheduled to have a hearing at this date and time, the applicant in that matter had withdrawn their application and their hearing had therefore been cancelled. I advised

them that they could contact the Residential Tenancy Branch (the "Branch") for further information if required and they subsequently exited the conference call.

The conference call then continued as scheduled with only the Applicant, the Applicant's support person, the Respondent and I.

Preliminary Matter #2

Once the preliminary matter addressed above had been resolved, the Respondent requested that the matter be adjourned so that they could file a cross-application seeking compensation for damages. I confirmed with the parties that the Applicant had moved-out of the dispute address on July 23, 2018, and the Respondent acknowledged that they had not yet filed an Application with the Branch.

Rule 7.8 of the Rules of Procedure states that any time after the dispute resolution hearing begins, the arbitrator may adjourn the hearing or a party or their agent may request that the hearing be adjourned. However, rule 7.9 goes on to state that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

The Respondent stated that they have had insufficient time to obtain police reports relevant to their own claims for damage to the rental unit and that the adjournment is therefore necessary to allow them time to obtain these reports and file their own application, which should be heard alongside this Application.

The Application before me was filed on August 9, 2018, and relates to the return of a security deposit and pet damage deposit as well as a claim for compensation for unpaid utilities and recovery of the filing fee. While I appreciate that the Respondent may wish to file a claim of their own, the parties agreed that the Applicant vacated the dispute address on July 23, 2018, and I therefore find that the Respondent has had sufficient time since that date to have filed their own claim seeking compensation, should they

have wished to do so. In any event, section 60 of the *Act* states that an Application must be made within two years of the end of the tenancy to which the matter relates and as a result, the Respondent still remains at liberty to file their own claim with the Branch, regardless of whether this hearing proceeds as scheduled.

Based on the above, I am satisfied that the Respondent's request for an adjournment has arisen primarily from their failure to seek their own application or to file a cross-application within the period specified by the Rules of Procedure. I also find that the there is no prejudice to the Respondent in failing to grant the adjournment and that the adjournment is not required to provide a fair opportunity for the Respondent to be heard as they remain at liberty to file their own application, which will be heard on its own merit, within two years of the end of the tenancy.

As a result, I therefore declined to grant the Respondent's request for an adjournment and the hearing proceeded as scheduled.

Preliminary Matter #3

Upon making the above finding, the Respondent then raised a jurisdictional concern and argued that I do not have the jurisdiction to hear or decide this matter as he is the owner of the dispute address where he shared a kitchen and bathroom with the Applicant. As a result, the Respondent argued that I have no jurisdiction over this matter pursuant to section 4 (c) of the *Act.*

As the Respondent raised a jurisdictional concern, I find that I must first turn my mind to whether I have the jurisdiction to hear and decide this matter before considering any of the merits of the Application.

Section 4 (c) of the *Act* states that the *Act* does not apply to living accommodation in which a tenant shares kitchen or bathroom facilities with the owner of that accommodation. Although both parties agreed that a tenancy agreement was signed in which the Applicant acknowledged that she would be sharing kitchen and bathroom facilities in the accommodation with the Respondent, who is the owner of that accommodation, the parties disagreed about whether this was actually the case.

The Respondent testified that at the time the tenancy agreement was entered into, a portion of the upstairs rental unit was rented to the Applicant for below market rent as it would be shared with him while he completed renovations in a separate suite/area of the building. The Respondent stated that the separate suite has now been converted into one fully functioning suite and a partial suite, and that during these renovations he

primarily resided in the partial suite. However, he stated that as this partial suite does not have a kitchen, shower or bathtub, he therefore shared the kitchen and bathroom facilities upstairs with the Applicant. In support of his testimony he pointed to the signed tenancy agreement in the documentary evidence before me for consideration which clearly states on page 1 that the landlord agrees to rent the tenant shared accommodation in the upstairs of the home and contains a separate clause also signed by the Applicant on page 9 in which it is explicitly stated that the tenant acknowledges and understands that the lease is for living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

Although the Applicant and her father agreed that these are the correct terms set-out in the signed tenancy agreement and that these terms were agreed to in writing by the Applicant, they argued that the Applicant did not fully read or understand these terms before signing the agreement, that the Respondent had taken advantage of Applicant as a young person with little to no tenancy experience, and that the Respondent was simply attempting to contract out of the *Act* by stating that it was shared accommodation when he in fact never lived with or shared kitchen or bathroom facilities with the Applicant. In support of this testimony the Applicant provided three letters of support; one from her sister who reportedly was present when the Applicant moved into the dispute address, one from a friend who reportedly stayed with the Applicant at the dispute address, and one from her employer who reportedly attended the move-out inspection. Further to this, the Applicant and her father argued that the nature and layout of the building in which the dispute address is located is such that the Respondents testimony regarding the layout of the suites and his need for and access to the Applicants rental unit could not be as described by him.

Although evidence and testimony was provided by the parties in relation to whether I have jurisdiction as outlined above, due to complexity of the matter and the time constraints of the one hour hearing, there was insufficient time for me to render a decision regarding jurisdiction or for the parties to provide any evidence or testimony for my consideration on the matters claimed by the Applicant. As a result, I found it necessary to adjourn the hearing and advised the parties that they would receive a decision the following week explaining that I had either reviewed the testimony and documentary evidence before me and declined jurisdiction or that the hearing would be reconvened at a later date to either gather additional evidence or testimony regarding jurisdiction and/or to address the matters claimed by the Applicant in the application.

Analysis

Section 4 (c) of the *Act* states that the *Act* does not apply to living accommodation in which a tenant shares kitchen or bathroom facilities with the owner of that accommodation. I have carefully reviewed the affirmed testimony provided by the parties in the hearing and the documentary evidence before me for consideration regarding whether or not this is a tenancy over which the Branch has jurisdiction under the *Act.* Although both parties provided affirmed testimony in the hearing, they disagreed about material facts and the nature of the living arrangements during the tenancy. As a result, I have turned my mind to the documentary evidence before me from the parties in support of whether or not this is a tenancy over which the Branch has jurisdiction under the *Act*.

While the Tenant submitted several letters of support, I note that these letters are not sworn or affirmed and that none of these witnesses appeared in the hearing to provide sworn or affirmed testimony or to answer questions about their statements. Further to this, while the authors of the letters allege to have details about the nature of the tenancy itself, two of the letters are from parties who only appear to have been present for brief periods of time at the start, end, or throughout the tenancy. As a result, I question their assertions that they have detailed and accurate knowledge regarding the nature and extent of the tenancy and living arrangements between the Applicant and the Respondent. Although a third letter is authored by a person alleging to have stayed with the Applicant, the letter contains no details regarding the nature or extent of this stay and is not accompanied by any corroborating documentation. As a result, I also question their assertions that they have detailed and accurate knowledge regarding the nature and extent of the tenancy and living arrangements between the Applicant and the Respondent. Further to this, although the Applicant and her support person testified that that the nature and layout of the building in which the dispute address is located is such that the Respondents testimony regarding the layout of the suites and his need for and access to the Applicants rental unit could not be as described by him, they submitted no documentary or other evidence to support this testimony, such as photographs or videos of the building and suite layout.

In contrast the Respondent submitted a signed tenancy agreement clearly stating in several areas of the agreement that it is shared accommodation and containing an entirely separate clause, also signed by the Applicant, which explicitly states that the tenant acknowledges and understands that the lease is for living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. Given the testimony of the parties in the hearing that this agreement was in fact signed by the parties, I find it very compelling in nature.

Although I appreciate the Applicant's testimony that she is young and that she did not read or fully understand all the conditions of the tenancy agreement before signing it, a tenancy agreement is a legal document and I find that it was incumbent upon her to read and understand the agreement prior to signing it. In any event, I also find that any failure to have done so does not excuse her from the agreement itself or any conditions or obligations contained therein. Based on the above, I find that I am satisfied, on a balance of probabilities, that the nature of the tenancy agreement between the parties is as asserted by the Respondent and explicitly stated in the tenancy agreement signed by the parties. As a result, I am satisfied that the Applicant shared kitchen or bathroom facilities with the Respondent, who is the owner of the accommodation. Based on the above I therefore decline jurisdiction in this matter, pursuant to section 4 (c) of the *Act* and I encourage the parties to seek independent legal advice with regards to this matter.

Conclusion

I decline to hear the claim made by the Applicant for compensation for damage or loss under the *Act*, regulation, or tenancy agreement, return of a security deposit and a pet damage deposit; and recovery of the filing fee for 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 *Residential Tenancy Act*.

Dated: November 30, 2018

Residential Tenancy Branch