



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNSD MNDCT

Introduction

This hearing was convened in response to an application pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award pursuant to section 67 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*; and
- a return of the security deposit pursuant to section 38 of the *Act*.

The applicant, along with both respondents, C.W. and K.W. attended the hearing by way of conference call. All parties who attended the hearing were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The respondents confirmed receipt of the application for dispute along with two evidentiary packages. The respondents are found to have been duly served in accordance with the *Act*.

The applicant confirmed receipt of the respondents’ evidentiary package and is found to have been duly served in accordance with the *Act*.

Issue(s) to be Decided

Is the applicant entitled to a monetary award, including a return of the filing fee?

Can the applicant recover her security deposit?

Preliminary Issue

The applicant is seeking a monetary award of \$2,500.00 for loss under the *Act*. The respondents sought to have the matter dismissed on the grounds that the parties had not entered a tenancy. The respondents argued the applicant had solely rented a room in the home.

The applicant maintained the rental unit in question consisted of a basement suite contained in a home where the respondents lived on the main floor. After a review of the evidence submitted by the respondents, and having considered the testimony of all parties present to the dispute, I find I am without jurisdiction to consider the matter.

Section 4 of the *Act* notes;

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 respondents' evidentiary package contained a copy of the original advertisement to which the applicant replied. This advertisement stated as follows, "Room for Rent – Looking for serious university students to rent clean bedrooms in the downstairs of our home. Separate entrance, kitchenette, shower room, shared laundry."

The find applicant did not have separate suite over which she had exclusive possession. I find that some aspects of the home were private; however, I find the respondents enjoyed unfettered access to the bathroom and "kitchen" area used by the applicant. The respondents stated they stored items in the fridge used by the applicant, cleaned the bathroom used by the applicant and accessed the shower. In addition, pictures supplied by the respondents show an open basement area that contained an area with a fireplace which was to be used by the respondents.

I find that the *Act* does not apply to this matter and I have no jurisdiction to make a decision on this matter because the evidence presented shows that the applicant shares bathroom and kitchen facilities with the owners of the accommodation.

Conclusion

I decline to rule on 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*.

Dated: November 30, 2018

Residential Tenancy Branch