



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

This hearing was convened as a result of the Applicant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession of the rental unit for the Applicant.

The Applicant and the Respondent appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Applicant and the Respondent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Applicant provided the Parties' email addresses in the Application, and they confirmed then in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Jurisdiction

Early in the hearing, the Respondent said that the Parties' dispute does not involve the Residential Tenancy Branch, because the living arrangement in question is not a tenancy under the Act. The Respondent said the residential property is his permanent residence, but that he is living with his girlfriend temporarily, due to police issues at the residential property. The Respondent said that normally, he shares the kitchen and bathroom with the people who rent rooms from him in the residential property, including the Applicant.

The Applicant said:

I just wanted to paint a picture here of a scam artist, who rents out rooms and tells a vulnerable person like me that he owns that house and property. In the end, just because I was not able to meet my rent obligations, because I was incurring unforeseen costs.... I asked for emergency benefit, because [the Respondent] had an issue with his landlord. But his intention was to keep me away from that knowledge. But the real landlord arrived one day, and I was able to understand that [the Respondent's] not the real landlord.

The Respondent said that he rents the residential property from the property owner and that he has this landlord's permission to sublet rooms; however, the Respondent was vague as to whether he had his landlord's written permission to sublet the residential property. There is no documentary evidence before me that the owner of the property has given his permission in writing for the Respondent to sublet rooms in the residential property.

Based on the evidence before me overall, I find that this is no more than a dispute between roommates, to which I find the Act does not apply, pursuant to section 4(c) of the Act. I, therefore, find that I do not have the jurisdiction to decide this matter for the Parties.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Pursuant to section 4(c) of the Act, I do not have the jurisdiction to decide this matter on the Parties' behalf. Section 4(c) states that the Act *does not apply* to living

accommodation in which the tenant shares bathroom or kitchen facilities with the landlord. I find that the owner of the property does not have a contractual relationship with the Applicant regarding the residential property, but that the Respondent does. However, I find that the Respondent does not have the authority to rent rooms in the rental unit pursuant to the Act, and therefore, that the matter does not fall under the Act.

Further, I find that the Respondent's permanent residence is the residential property, and that he shares the kitchen and bathroom with the Applicant. As such, I find that this accommodation is outside of the Act, and therefore, I have no jurisdiction to consider this matter.

The Parties have cross-applications in a different hearing in February 2021 that must be addressed by the arbitrator assigned those files.

Conclusion

I decline to rule on this matter as I have no jurisdiction to consider this Application. The Parties are referred to the Civil Resolution Tribunal for assistance in resolving their dispute.

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 21, 2020

Residential Tenancy Branch