



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, OLC, FFT, CNL, OLC, FFT

Introduction and Preliminary Matters

On June 5, 2023, the Applicant made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Residential Tenancy Act* (the “*Act*”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On August 9, 2023, the Applicant then made another Application for Dispute Resolution seeking to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property pursuant to Section 49 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Applicant and the Respondent attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Notice of Hearing and evidence packages was not discussed as the matter or jurisdiction was raised by the Respondent.

The Respondent knew very little about the details of when this rental situation began, and she did not create a written tenancy agreement. It was apparent that the

Respondent was extremely disorganized and took little care in managing this property with any care or control. It also appears as if the Respondent is conducting some sort of AirBNB/hybrid tenancy situation with this property, and it is possible that the manner with which she is operating this property contravenes municipal bylaws and also the *Act*. Regardless, she initially advised that the rental unit was a semi-self-contained unit that consists of a private room with its own entrance, and a bathroom, but the kitchenette/laundry room is shared with the Applicant. She confirmed that she had been renting this space out to the Applicant as an AirBNB, and that she “guessed” that she stopped doing so on August 1, 2022.

She testified that she would use the shared kitchenette/laundry room about once or twice a week, or her hired help would use the kitchenette/laundry room. Despite her belief that this situation did not fall under the jurisdiction of the *Act*, she stated that she served the One Month Notice to End Tenancy for Cause and the Two Month Notice to End Tenancy for Landlord’s Use of Property because the Applicant would not leave, and he requested that the Respondent use the approved forms. She claimed that she was away travelling from September 2022 to October 11, 2022, from mid-March 2023 to Mid-April 2023, and from June 22, 2023, to just prior to the hearing date.

The Applicant advised that he originally rented the unit as an AirBNB from May 16 to 27, 2022, from July 3 to July 5, 2022, and from July 6 to 19, 2022. He then testified that he rented it as full-time residence from July 19, 2022, onwards. However, he submitted that the Respondent rented out his unit to other people on AirBNB from August 26 to October 11, 2022, so he simply moved upstairs to the Respondent’s living area during this time as he wanted to accommodate the Respondent. He also indicated that this had happened in the past as well. He then stated that from October 11, 2022, to the date of the hearing, it was his position that he was a full-time tenant. He confirmed that he paid \$1,500.00 per month, that the rent was due on the first day of each month, and that he did not pay a security deposit or pet damage deposit.

He testified that it was his belief that he had exclusive use of the kitchen, and that he had never seen the Respondent use this kitchen. However, he did confirm that the Respondent’s housekeeper would use the laundry machines in this kitchen area once per week.

The Respondent confirmed the bizarre living arrangement where she would rent out the Applicant’s space, and that the Applicant would then go and live in her space during those time periods. She claimed that from October 11, 2022 onwards, she would go into this area that she deemed a shared kitchen at least once per week and would see the

Applicant in there. However, she contradictorily testified that she would never use the kitchen when the Applicant was present, and would only use it when he was not around.

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In addition, given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence and testimony of the parties, clearly the problems with this situation were created by the Respondent's mismanagement of this property. It was entirely evident that she had little to no knowledge of the *Act*, and that she was also renting out this property under AirBNB, with likely little knowledge of any rules or restrictions regarding this type of rental either. This is clearly a situation where the Respondent elected to rent out her property in any manner that she believed was appropriate, and then figure out any issues that might arise at a later date.

In my view, had she truly believed that the *Act* had no jurisdiction over this situation, then it makes no logical sense that she would have then served not only a One Month Notice to End Tenancy for Cause, but then a Two Month Notice to End Tenancy for Landlord's Use of Property. Furthermore, I find it important to note that the Respondent's own written submission, dated August 25, 2023, is the first time that she raises the issue of jurisdiction. From this, I find it reasonable to conclude that had she been aware that jurisdiction was an issue prior to this point, she would have never served the notices to end tenancy in the first place.

As this submission was written well after the notices to end tenancy were served, it is more likely than not that she only discovered this Section of the *Act* later, and then suggested it as a loophole in an attempt to get herself out of this situation. As well, it should be noted that as above, it was entirely evident that the Respondent was disorganized and knew little of the details of this tenancy situation. This is consistent with the multiple odd AirBNB bookings where the Applicant would be shuttling back and forth between the Respondent's residence and the rental unit. I found the Respondent

to know not only little of what had transpired, but I also found her to provide inconsistent and contradictory testimony, which led me to the belief that she was not being truthful or honest about this situation. Given that she only discovered the Section of the *Act* regarding jurisdiction in or around August 2022, given that she was away travelling for such a significant amount of time, and given that she testified that she used the kitchen downstairs conveniently only when the Applicant was not around, I am extremely doubtful about the reliability and legitimacy of her testimony that she specifically used the kitchen downstairs herself. As such, I find from all these doubts created by the Respondent's dubious testimony, that the Respondent lacks credibility on the whole, and that her claims are entirely untruthful. I am satisfied that the Respondent has, more likely than not, provided fictitious testimony in an effort to portray a series of events that was intended to benefit herself, and to avoid any consequences that she has brought upon herself.

Regardless of this finding however, I find it important to note that the Applicant indicated on his Application that the rental unit was specifically "ONE ROOM WITH A SHOWER AND TOILET". This, in my view, supports a conclusion that the Applicant was of the mind that the rental area did not include the kitchen, despite his testimony during the hearing that it was part of his exclusive living space. Despite all of this, the consistent and undisputed evidence is that the laundry was included as part of this kitchenette room, and that the Respondent had a housekeeper use this area at least once per week. As such, under a plain reading of Section 4 of the *Act*, I find that the Applicant did share a kitchen facility with the Respondent. Moreover, given that the Applicant was amendable to moving upstairs to the Respondent's living quarters periodically, I find that this further supports that this was not likely a tenancy that falls under the jurisdiction of the *Act*.

Ultimately, I find that even if the parties intended upon entering into a tenancy agreement as contemplated under Section 1 of the *Act*, the *Act* would not apply to this tenancy as there is no Landlord/Tenant relationship that has been created. Therefore, I have no jurisdiction to render a Decision in this matter.

However, the Respondent is cautioned that conducting business in this manner of renting a property ambiguously, but then also using Residential Tenancy Branch forms which indicate the opposite, appears as if this is the Respondent's attempt to contract outside of the *Act*. The Respondent is cautioned that continued operation in this manner may warrant investigation and the levying of administrative penalties by the Compliance and Enforcement Unit of the Residential Tenancy Branch if it is determined that the Respondent is attempting to apply this practice of utilizing the *Act* only when it is

beneficial and suits the Respondent best. Furthermore, it should be noted that a future Arbitrator may not look favourably on another situation that would arise should the Respondent continue to operate this property in the same duplicitous manner that she has elected to do so to date.

As the *Act* does not have jurisdiction over this matter, I find that the Applicant is not entitled to recover the \$100.00 filing fees paid for this Application.

Conclusion

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

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: October 4, 2023

Residential Tenancy Branch