



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with the tenant's application for return of the tenant's security deposit and recovery of the filing fee paid for this application. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

Issue(s) to be Decided

1. Whether the *Residential Tenancy Act* (the Act) applies to the living accommodation that is the subject of this dispute.

Background and Evidence

The agent testified that the tenant received only a partial refund of the security deposit by way of a cheque mailed to the tenant or the tenant's agent on November 27, 2008. The agent testified that the landlord did not have the tenant's written authority to deduct amounts for cleaning or carpet cleaning. The agent testified that a forwarding address was provided to the landlord's assistant manager, in writing, on October 27, 2008.

The landlord testified that the Act does not apply to the living accommodation rented by the tenant. The landlord testified that the property is a community care facility and that the landlord was granted an operating license under the *Community Care and Assisted Living Act*. The landlord submitted that evidence, including operating licenses for the years 2005 through to the present time, was provided to the Residential Tenancy

Branch and served upon the tenant. It was determined that the evidence submitted to the branch was provided under a reference number and not a file number and that the documentary evidence was not before me at the time of the hearing.

The agent confirmed that he had seen the evidence submitted by the landlord with respect to the license to operate as a community care facility and the agent did not dispute that the landlord operates the property under the *Community Care and Assisted Living Act*.

Analysis

Based on undisputed testimony of the parties, I find that the Act does not apply to the living accommodation rented to the tenant. Section 4 of the Act provides for living accommodation to which the Act does not apply. Section 4 provides, in part,

What this Act does not apply to

4 This Act does not apply to

(g) living accommodation

- (i) in a community care facility under the *Community Care and Assisted Living Act*,
- (ii) in a continuing care facility under the *Continuing Care Act*,
- (iii) in a public or private hospital under the *Hospital Act*,
- (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
- (v) in a housing based health facility that provides hospitality support services and personal health care,
or

(vi) that is made available in the course of providing
rehabilitative or therapeutic treatment or services,

[my emphasis added]

As the Act does not apply to the living accommodation rented to the tenant, I do not have jurisdiction to resolve this dispute. Accordingly, I can not make any award to the tenant under this application and the tenant's application is dismissed without leave.

Conclusion

The Act does not apply to this living accommodation and I dismiss the tenant's application without leave.

January 13, 2009

Date of Decision

Dispute Resolution Officer