

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the Residential Tenancy Act (*Act*), regulation or tenancy agreement.

The tenant served the landlord by registered mail on March 04, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- 1) Does the Residential Tenancy Act apply to this tenancy and do I have jurisdiction over this dispute?
- 2) If so is the tenant entitled to a Monetary Order for money owed or compensation or damage or loss?

Background and Evidence

The tenant testifies that the landlord's advertisement for accommodation was posted in the "long term accommodation" listings. She arranged to rent one bedroom in a house where there were a total of six bedrooms. The tenant claims she understood this to be a rental agreement starting on November 12, 2009 and ended on April 25, 2010. The tenant paid a total of \$6,800.00 in rent in advance for this rental period. The tenant states she paid a security deposit of \$500.00 which has been returned to her by the landlord.

The tenant states she believed this was a tenancy agreement as it was a six month rental. The tenant states she did not sign a tenancy agreement with the landlord.

The tenant testifies that she gave the landlord written notice to end her tenancy on January 29, 2010 and ended her tenancy on February 28, 2010. The tenant states that from November 05, 2009 to April 25, 2010 is 24 weeks and three days. The tenant calculates her weekly rent to have been \$277.55 a week. The tenant claims that after her notice period there were nine weeks left on the six month term of which she had paid rent and calculates that the landlord owes her \$2,497.95. The tenant seeks a Monetary Order for this amount.

The respondent testifies that he runs a vacation and holiday business, which offers accommodation packages in his hotels and inns. The respondent states that he is a licensed hotel and inn operator for tourist accommodation only. The respondent claims the applicant purchased a vacation package from him for the six months winter session. The respondent states that his guests stay in his hotel/inn on a twin share basis and share other common facilities such as the kitchen, bathrooms and living areas. The respondent states the applicant paid the rate for his winter vacation package of \$6,800.00.

The respondent testifies that the lodges are furnished and he collects the garbage on a weekly basis and uses the bathroom facilities at this time.

The respondent states that the *Residential Tenancy Act* does not apply as he only offers living accommodation as vacation accommodation and he shares the bathroom facilities with the guests on a weekly basis.

Analysis

The landlord submits that I do not have jurisdiction over this matter. In this regard I note that the *Residential Tenancy Act* does not apply to every rental situation. Section 4 specifies certain situations in which the *Act* does not apply, including subsection (e): living accommodation occupied as vacation or travel accommodation.

While I accept the living arrangement is similar to a shared accommodation, I note that many of the hallmarks of a typical tenancy are absent in this situation. There is no exclusive possession of any portion of the rented premises. Payment of the seasonal rate entitles the occupant to a room on a twin-shared basis. Payment entitles the occupant to use of the rest of the lodge facilities, only on a shared basis. Payment for the entire winter season had to be paid in advance. The respondent uses the bathroom at the premises on a regular basis. Although advertised as a long term accommodation, The landlords business is clearly a vacation business and he is licensed to operate a hotel/inn residential tourist accommodation.

I find therefore that this is not a tenancy governed by the Residential Tenancy Act, but is rather living accommodation occupied as vacation accommodation. It is also likely that this is accommodation in which the guests shares bathroom facilities with the owner on a weekly basis.

Conclusion

The *Residential Tenancy Act* does not apply to the living arrangements, and I therefore I have declined jurisdiction over this 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: June 24, 2010.

Dispute Resolution Officer