

DECISION

Dispute Codes

MNSD MNDC

Introduction

This hearing was convened in response to an amended application by the tenant for the return of their security deposit and pet damage deposit in the residual amount of \$700. The tenant also applies for compensation under section 38 of the Residential Tenancy Act (the Act) for double the deposits, originally totalling \$2000.

The tenant identified that the living accommodations of the dispute address were secured as vacation accommodations for one month: subsequently extended for an additional 6 weeks.

According to the applicant the landlord was served with the Application and Notice of Today's hearing by International Registered Mail sent from Germany on December 03, 2009. Despite being deemed served after five (5) days the landlord did not appear in the hearing.

Issue(s) to be Decided

Does the Director have jurisdiction under the Act in respect to this rental accommodation? If so,

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed testimony of the applicant is as follows. The applicant secured the rental property via a third party agent for a period of one month starting July 07, 2009 in the amount of \$2500 per month. At the outset of the rental the applicant paid the agent a total of \$2500 in security and pet damage deposit and entered into a written contract (referred by the applicant as a rental agreement) with the landlord to August 07, 2009. I do not have benefit of the purported rental agreement or any other document evidence; however, the applicant explained that they travelled to the subject area on vacation and that their trip was recreational. They rented the coach house, situated on the same residential property as the landlord, and they periodically met with the landlord and also communicated via e-mail.

On August 07, 2009 the applicant and the landlord extended the contract to September 21, 2009, and the applicant and landlord agreed for the landlord to use \$500 of the

original \$2500 deposits as partial payment towards the new extended period. On September 19, 2009, the applicant sent the landlord an e-mail with their forwarding address in Germany, and 2 days later the applicant vacated the rental unit. The tenant testified that there was no inspection of the rental unit conducted at the outset or at the end of the rental period, although the rental contract provided for periodic cleaning by the landlord – “at the end we shook hands and departed”.

In early November 2009 the landlord communicated that she was forwarding the majority of the applicant’s deposit and would be retaining \$700 as a cleaning fee. In mid December 2009 the tenant received \$1300 from the landlord. The tenant seeks the return of the balance of the deposit in the amount of \$700.

Analysis

In the absence of any document or supporting evidence from the applicant or the landlord in respect to this rental or any issue or information advanced by the applicant, and on the preponderance of the testimony of the applicant; and, on the balance of probabilities, **I find** that the applicant entered into a living accommodation occupied as a vacation or travel accommodation.

Section 4 of the Act, states as follows (**emphasis for ease**):

What this Act does not apply to

4 This Act does not apply to

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,
- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,
- (e) living accommodation occupied as vacation or travel accommodation,**
- (f) living accommodation provided for emergency shelter or transitional housing,
- (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,
- (h) living accommodation in a correctional institution,
- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,
- (j) tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies, or
- (k) prescribed tenancy agreements, rental units or residential property.

As a result, I decline jurisdiction of this matter as the Act does not apply to living accommodations occupied as vacation or travel accommodations.

Conclusion

This application is **dismissed without leave to reapply**.

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*.
