

## **DECISION**

Dispute Codes      MNSD FF  
                             MNSD FF

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a Monetary Order to keep the security deposit and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking a Monetary Order for the return of double his security deposit and to recover the cost of the filing fee from the Landlord.

Service of the hearing documents by the Tenant to the Landlord was done in accordance with section 89 of the *Act*, served personally by the Tenant's Agent to the Landlord's Agent on March 17, 2010.

The Tenant and the Tenant's Agent appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

No one appeared on behalf of the Landlord despite the Landlord's Agent being served with notice of today's hearing in accordance with the *Act* and despite having his own application for dispute resolution scheduled for the same hearing date and time.

### **Issue(s) to be Decided**

Is the Landlord entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Is the Tenant entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

### **Background and Evidence**

The Tenant testified that he is the owner of the company who is in the business of renting furnished accommodations to his clients. In this case the Tenant did not have a rental unit to accommodate his client, during the Olympics, so he rented the unit, as the

Tenant, and then subleased the unit to his client who occupied the unit. He argued that they dealt directly with the Landlord's Agent in negotiating and entering into the lease however the tenancy agreement, the payments of the rent and the security deposit were issued in the Landlord's name.

When I raised the issue of jurisdiction for vacation rentals the Tenant argued that his company did not deal in holiday rentals and that their business was to find accommodation for residential occupancy and that most of their clients rent units for three to six months. The Tenant agreed to fax me documentation regarding the client who occupied this unit and about his company no later than Monday July 12, 2010.

The Tenant referred to their documentary evidence which included among other things a copy of the tenancy agreement and the written request for the return of the security deposit which included their forwarding address and was signed received by the Landlord's Agent on February 28, 2010.

The fixed term tenancy agreement was effective February 10, 2010 and was set to expire on February 28, 2010, at which time the Occupant had to vacate the rental unit. Rent was payable in the amount of \$2,050.00 and a security deposit of \$750.00 was paid on January 26, 2010. There was no move-in inspection report completed nor was there a move-out inspection report completed. The Tenant stated that his firm provided cleaning services for the rental unit for the period it was occupied by his client.

### Analysis

All of the testimony and documentary evidence was carefully considered.

### **Tenant's Application**

A fax was received from the Tenant prior to 8:30 a.m. opening on July 13, 2010 as requested. The fax included four pages which included a cover sheet, a copy of the Tenant's advertising from what appears to be a website, and a copy of the two page occupant's application for tenancy. A copy of each document is attached to this decision in order to uphold the principals of natural justice.

With respect to a tenancy that is established for the purpose of re-renting the unit the *Residential Tenancy Policy Guidelines* provide that I must consider the nature or the type of property that is regulated by the *Residential Tenancy Act*. If the type of property comes within the definitions in the legislation and does not fall within any of the

exceptions in the legislation, the *Residential Tenancy Act* will govern. In this case I find the property in question meets the definition of a rental unit as defined under the Act.

Having found the property meets the definition of a rental unit I must also consider if this tenancy agreement was entered into for the purpose of a residential tenancy or for a vacation and/or travel accommodation. The evidence supports the property was rented and occupied for a period of eighteen days and included all furnishings, linens, and cleaning services. The tenancy was for a very short and specific period of time which the occupant applied for the “need to be in (name of city) for business and personal reasons”. Based on the aforementioned, I find on a balance of probabilities this tenancy was entered into for vacation or travel accommodation and not for the purpose of a residential tenancy; and therefore the *Residential Tenancy Act* does not apply to this tenancy. For these reasons, I decline to hear this matter for want of jurisdiction, in accordance with section 4(e) of the *Residential Tenancy Act*.

Having found this tenancy to be excluded from the Act, I hereby decline to award recovery of the filing fee.

### **Landlord’s Application**

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Landlord, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Landlord called into the hearing during this time.

Having found above that this tenancy is not governed by the *Residential Tenancy Act*, the Landlord’s application is dismissed, without leave to reapply.

### **Conclusion**

### **Landlord’s Application**

I HEREBY DISMISS the application, for want of jurisdiction. If the applicant wishes to pursue this matter they are advised to make application with the appropriate court.

### **Tenant’s Application**

I HEREBY DISMISS the application, for want of jurisdiction. If the applicant wishes to pursue this matter they are advised to make application with the appropriate court.

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: July 13, 2010.

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Dispute Resolution Officer