



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Agent for the Tenant to obtain a Monetary Order for the return of double the security deposit and to recover the cost of the filing fee from the Landlord for this application.

Issue(s) to be Decided

1. Does this tenancy fall within the jurisdiction of the *Residential Tenancy Act*?

Background and Evidence

The Landlord and the Landlord's Agent testified the rental unit is a living accommodation as defined by section 4(g) of the Act and therefore the *Residential Tenancy Act* does not apply.

They confirmed that they must renew their license annually with their local health authority and have to undergo scheduled quarterly, and sometimes surprise, inspections. They explained that there are different levels of assisted living residences and the one they are operating does not have staff that provide medical care, however they work very closely with the health authority and have meetings with them to discuss patient care which is referred to as "cluster care". This level of housing provides for independent living with assistance.

The Landlord pointed out that the Tenant's tenancy agreement confirms that weekly housekeeping, meals, snacks, and activity programs are all included in his rent. There are no cooking facilities in his room. The rent does not change based on the services required and they work closely with the health authority to ensure requirements such as medication and health care are administered as needed.

The Tenant's Agent testified and confirmed the Tenant's rent included the assisted living care as stated by the Landlord and his Agent. He advised that he has made this application because he wanted answers to why they retained \$547.50 from the Tenant's security deposit with no explanation.

Analysis

Section 4(g)(i) of the *Act* stipulates that the *Act* does not apply to living accommodation in a community care facility under the *Community Care and Assisted Living Act (CCAL Act)*. Section 1 of the CCAL Act defines a "community care facility" as a premises or part of a premises in which a person provides care to 3 or more persons who are not related by blood or marriage to the person and includes any other premises or part of a premises that, in the opinion of the medical health officer, is used in conjunction with the community care facility for the purpose of providing care, or is a designated by the Lieutenant Governor in Council to be a community care facility.

The Landlord presented evidence to establish that the rental unit is a premises or part of a premise that, in the opinion of the medical health officer (based on the issuance of their annual license from the local health authority), is used in conjunction with the community care facility for the purpose of providing care.

Section 1 of the *CCAL Act* defines "care", in part, as supervision that is provided to an adult who is vulnerable because of family circumstances, age, disability, illness or frailty, and is dependent on caregivers for continuing assistance or direction in the form of 3 or more of the services prescribed by section 34 of the *CCAL Act*. Section 2 of the CCAL Regulation defines prescribed services for the purposes of the CCAL Act to be:

- (a) regular assistance with activities of daily living, including eating, mobility, dressing, grooming, bathing or personal hygiene;
- (b) central storage of medication, distribution of medication, administering medication or monitoring the taking of medication;
- (c) maintenance or management of the cash resources or other property of a resident or person in care;
- (d) monitoring of food intake or of adherence to therapeutic diets;
- (e) structured behaviour management and intervention;
- (f) psychosocial rehabilitative therapy or intensive physical rehabilitative therapy.

I find that the Landlord has established that the rental unit is in a community care facility as the Landlord, in conjunction with the health authority, provides three or more of the services prescribed by the *CCAL Act and Regulation*, as listed above.

Based on the aforementioned, I find that the residential complex is exempted from the *Residential Tenancy Act* pursuant to section 4(g) of the *Act*.

The applicant has not been successful with this application; therefore he must bear the burden of the cost to file this claim.

Conclusion

I hereby decline to hear this matter for want of jurisdiction; therefore the application is dismissed without leave to reapply.

The applicant is at liberty to seek remedy in the appropriate forum.

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 02, 2011.

Residential Tenancy Branch