

DECISION

Dispute Codes: MNDC, MNSD qnd FF

Introduction

This application was brought by the tenant on June 29, 2011 seeking return of her security deposit in double on the grounds that the landlords did not return it or file to claim against it within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address as required under section 38(1) and (6) of the *Act*.

The tenant also sought return of one month's rent paid and compensation of \$500 for each of two months for compensation for hosts with whom she stayed after she was forced to vacate the rental unit due to bed bug bites.

Despite having been served with the Notice of Hearing sent by registered mail on June 30, 2011, the landlords did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

The rental agreement submitted into evidence, signed by the landlord on April 18, 2011 but not signed by the tenant, presented a question as to whether the Residential Tenancy Branch can take jurisdiction over this matter.

The rental agreement bears the heading, "Agreement on share a live/work studio at Railtown Studios & providing Studio Manager services."

The agreement includes the statement that the tenant "is a full-time room-mate and live-work studio-mate or person sharing studio or office."

In addition, the agreement notes that the tenant's access....is based on her exceptional skill set ...willing to engage in the visual arts and digital media....as a collaborator with the specific role of Studio Manager.

This provision calls into question whether this tenancy is excluded from the jurisdiction of the *Residential Tenancy Act* by section 4 which sets out types of rental agreements that are not covered by the *Act* and includes the exception that:

“This Act does not apply to

(d) living accommodation included with premises that

- (i) are primarily occupied for business purposes, and
- (ii) are rented under a single agreement,”

In addition, in previous tenancies of this type in which the accommodation is 70 percent work/studio and 30 percent living accommodation, the Supreme Court of British Columbia has found predominant use of the rental unit to be the determining factor in finding jurisdiction.

Legal counsel for the tenant submits that this is a tenancy covered by the *Act* on the grounds that the tenant slept in the rental unit for only two nights, April 29, 2011 and May 11, 2011 at which time she vacated the rental unit due to bed bugs and in that short time had made no commercial use of the accommodation.

In addition, he pointed to another document, unsigned by the tenant, which granted a \$125 rent reduction for May as the tenant’s work area by the window was not available for the month.

He stated that the present matter differs from other tenancies of this type to the extent the applicant’s agreement is with existing tenants rather than with a landlord.

I find that the agreement submitted by the tenant, although not yet signed, is a live/work agreement and that was clearly the intention of the parties to share in what is primarily a commercial tenancy agreement..

Therefore, I find that jurisdiction over this matter is beyond the jurisdiction of the *Act* as stated at section 4(d).

I must decline to jurisdiction and would direct the application to a court of competent jurisdiction.

September 30, 2011