



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order. Both parties participated in the conference call hearing, the tenant being represented by an agent (the “Agent”) to whom she had granted her power of attorney.

Issue to be Decided

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

Background and Evidence

The parties agreed that the rental unit is in a senior’s residence which provides meals, laundry services and other amenities. The landlord took the position that the residence was exempt from the Act pursuant to section 4(g)(v) which provides:

- 4 This Act does not apply to
 - (g) living accommodation
 - (v) in a housing based health facility that provides hospitality support services and personal health care ..

The landlord testified that in addition to providing meals and laundry services, the landlord also offers meal tray service during illness, access to medical professionals such as foot care specialists and social programs. The residence has 24 hour support staff and have an emergency response call bell system in each suite through which residents in crisis can summon a staff member.

The landlord provided copies of previous decisions in which dispute resolution officers had declined jurisdiction over rental units in the residence.

The Agent argued that this is not a care home, but in independent living situation with perks. He further argued that the tenancy agreement identifies itself as a "Resident Tenancy Agreement" which suggests that it falls under the Act.

Analysis

I find on the balance of probabilities that the rental unit is living accommodation in a housing based health facility that provides hospitality support services and personal health care. I have arrived at this conclusion because it is apparent that the services provided by the landlord far exceed what would ordinarily be offered in a typical residential tenancy. Although the tenancy agreement calls itself a "Resident Tenancy Agreement," this does not mean that it falls within the jurisdiction of the Act as there are many types of residential tenancies which fall outside its jurisdiction.

Conclusion

As this tenancy falls within the scope of section 4(g)(v) as an exempt tenancy, I dismiss the claim for want of jurisdiction.

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: November 18, 2011

Residential Tenancy Branch