



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution seeking an interim order on the matter of jurisdiction.

The *ex parte* hearing was conducted in person at 3350 Douglas St, Victoria and was attended by both applicants and their advocate.

Issue(s) to be Decided

The issue to be decided is whether the applicants and respondent are in a tenancy as defined under the *Residential Tenancy Act (Act)* or if the living accommodation is exempt from the *Act*, pursuant to Sections 4 and 59 of the *Act*.

Background and Evidence

The applicants submitted into evidence copies of receipts for the payment of rent from January 25, 2012 to July 1, 2012. The receipts for the period February 1, 2012 to July 1, 2012 indicate the applicants paid \$749.00 per month for their accommodation and HST but no municipal tax.

The tenants testified the landlord completed a Shelter Information Form for the Ministry of Social Development (MSD) which allowed the tenants to receive and pay the respondent \$400.00 as a security deposit and that their rent is paid directly to the respondent from the MSD.

The applicants testified that they have been living in the unit since December 26, 2011 and that the landlord provides housekeeping services once per week. The applicants also state that to the best of their knowledge the landlord does not enter the rental unit without any notice and that they have never been informed of any specific times where they cannot have visitors.

The applicants also testified there was no discussion of how the arrangement would end other than the applicant advising the respondent that they would be staying in the unit until such time as they found more suitable accommodation.

Analysis

Section 1 of the *Act* defines a tenancy agreement as an agreement between a landlord and tenant respecting possession of a rental unit, use of common areas and services and facilities and includes a licence to occupy.

A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month.

Based on the applicants' testimony, I find that the applicants have been paying monthly rent since February 1, 2012; that they have paid rent in advance; and that they have paid the rent on or about the same time each month. I find that these payments confer to the applicant exclusive possession of the unit for each month.

In addition, from the receipts submitted, I find, despite charging the HST, the respondent has not been charging the applicant's a hotel room tax for any part of their occupancy of the rental unit (i.e. the 2% municipal tax required under the *Hotel Keeper's Act*.)

From the receipts and testimony submitted I find the applicants paid a security deposit of \$400.00; that they have not paid any municipal Hotel Room taxes; that the respondent has not retained access to or control over portions of the unit; that the respondent has not retained the right to enter the unit without notice; that the parties have not agreed that the applicant may be evicted without reason.

Based on the above, I find that this rental unit is the applicants' only home and not vacation accommodation. I therefore find that the true nature of the occupancy is residential accommodation. For these reasons I find this is a tenancy and is not exempt from the *Act* pursuant to section 4(e).

Conclusion

Section 59(6) of the *Act* allows an individual occupying a room in a residential hotel to make an application for dispute resolution, without notice to any other party, requesting an interim order that this *Act* applies to that living accommodation.

For the reasons noted above, I grant the applicants an interim order that the *Residential Tenancy Act* applies to their living accommodation. I order that should the applicants proceed with an Application for Dispute Resolution for any matter they must provide a copy of this interim order with their Application and evidence for those matters and in accordance with the requirements of the *Act*.

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 18, 2012.

Residential Tenancy Branch