



Dispute Resolution Services

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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 hearing was conducted via teleconference and was attended by both tenants and their advocate.

Issue(s) to be Decided

The issue to be decided is 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 a copy of an agreement signed by the parties on March 19, 2012 indicating a monthly rate of \$990.00 with a damage deposit of \$200.00. The agreement includes reference to guests being “under the Hotel Inn Keepers Act and subject to a 2% Hotel Room Tax”.

The agreement does not indicate when the occupancy began, however the receipts submitted by the applicants state they checked in on March 21, 2012. The agreement does stipulate that “full advance payment of the rent plus taxes and security deposit is required upon check-in but provides no indication of when it is due beyond the period covered by an initial payment.

The receipt submitted by the applicants indicates that on March 21, 2012 they paid \$990.00 – no tax is indicated despite a column for tax on the receipt and \$200.00 described as deposit damage. The receipt also shows the applicants paid an additional \$990.00 on April 25, 2012.

The applicants also submit they have not been restricted in bringing in their own personal effects such as a stereo and dishes; that there was not discussion at any time with the respondent regarding any access requirements of the respondent; that despite having one of their non-resident sons stay overnight the landlord has neither attempted to end the occupancy nor charged for an additional occupant.

The applicants submit that Section 5 of the *Hotel Keeper's Act* requires the landlord to post a notice of liability limitation within the accommodation and that no such notice is in the accommodation in which they are residing.

The tenants testified that they are aware that some other occupants on the property have been there as long as 10 months and one person has been there at least 1 ½ years.

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 March 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 the respondent has not been charging the applicant's a hotel room or any other type of tax for any part of their occupancy of the rental unit.

From the agreement, receipts, and testimony submitted I find the applicants paid a security deposit of \$200.00; that they have not paid any Hotel Room or other 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, in fact specific reasons for eviction were agreed to.

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 07, 2012.

Residential Tenancy Branch