



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, O, FF

Introduction

This was a hearing with respect to applications by the tenants and by the landlords. Each of the parties has applied for a monetary order and for the return or the retention of the tenants' security deposit. The hearing was conducted by conference call. The named landlord and the named tenant called in and participated in the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?

Are the tenants entitled to the return of their security deposit?

Are the landlords entitled to a monetary award and if so, in what amount?

Are the landlords entitled to retain the security deposit?

Background and Evidence

The rental property is a house in Richmond. The tenancy began on August 1, 2014 for a two year term with monthly rent of \$3,400.00. The landlord advertised the rental property for use as a licensed daycare facility. It was used for this purpose by other occupants before this tenancy began. When the tenants agreed to rent the house the agreement was subject to the tenant obtaining a license to operate a daycare business in the rental property. The tenants did operate a daycare business in the rental property. The tenants moved out of the rental property before the end of the fixed term tenancy. The tenants have claimed the sum of \$25,000.00; the sum claimed included a claim for repayment of rent. The tenants claimed that a flood from a burst boiler rendered the rental property unfit for habitation or use as a daycare. The landlords claimed a monetary award in the amount of \$24,725.00 for damage to the rental property and unpaid rent. The tenancy agreement required the tenants to obtain business insurance and there is no dispute that the tenants did operate a daycare business in the rental property.

The tenants moved out of the rental property in March and moved their daycare business to a new location.

Analysis

The *Residential Tenancy Act* provides by section 4:

What this Act does not apply to

4 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,

The documents submitted by the landlords and by the tenants establish that the rental property was advertised for rent for the purpose of operating a daycare business from the rental property. It was rented and used by the tenants for this business purpose. The fact that there is a document described as a residential tenancy agreement is not determinative of the nature of the rental agreement. I find that the evidence submitted by both parties establishes that the primary purpose of the rental was to operate the a daycare business out of the rental property with the intention of making a profit and the onsite living accommodation was occupied in order to run the daycare. Provisions in the addendum to the tenancy agreement support the view that the primary purpose of the tenancy was business related; the agreement provided that: "The residential tenancy agreement is subject to the following conditions: b. Successful daycare business licensing by the TENANT under the name (name of business) Home Daycare 2".

I find that I have no jurisdiction to consider the claims by the tenants or by the landlords because the living accommodation was included with premises primarily occupied for a business purpose. I dismiss the applications for dispute resolution without leave to reapply. The applicants may wish to pursue their claims in another forum after obtaining legal advice.

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: August 01, 2014

Residential Tenancy Branch

