



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EXCLUSIVE CONCIERGE SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing involved the Tenants making a claim against the Landlords for return of the security deposit and to recover the filing fee for the Application, pursuant to the Residential Tenancy Act (the “Act”).

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue

At the outset of the hearing the Agent for the Landlord raised the issue of whether the Act applied to this situation. The Agent argued that this was a vacation rental and that the Act should not apply.

In evidence the Tenants had provided a copy of a standard statutory form tenancy agreement “RTB-1”. This tenancy agreement is approved in form in the regulation to the Act, and is often referred to as the, “standard form tenancy agreement.” This was the document presented to the Tenants by the Agent for the Landlord.

The Tenants signed this document on April 13 of 2013, and it indicates the tenancy begins on May 1, 2013, and was for an initial fixed term of two months and then reverted to a month to month tenancy. The Tenants vacated the rental unit on October 21, with the tenancy ending on October 31, 2013.

The Tenants paid a monthly rent of \$2,200.00 and provided the Agent for the Landlord with a security deposit of \$1,100.00.

The Agent argued that the Tenants were also supplied with a letter from his company explaining that it,

“... is not a conventional Rental Company. The Residential Tenancy Act does not apply to living accommodation occupied as vacation or travel rental.”

[Reproduced as written.]

However, according to the submissions of the Tenants this letter was not provided to them until December of 2013, well after the tenancy had ended, and when they had requested return of the security deposit.

I explained to the parties that I was finding that the Act did apply to this tenancy. The letter sent to the Tenants was contrary to the contract they agreed to. The Agent for the Landlord cannot unilaterally change a contract with a letter.

I also find that even if the letter was attached to the tenancy agreement, I would find it unconscionable for a landlord to offer a residential tenancy agreement to prospective renters and then use an addendum to try and avoid the Act.

More importantly, section 5 of the Act precludes landlords and tenants from contracting outside the Act.

Here the parties signed a standard form tenancy agreement, clearly titled as a tenancy agreement. The Tenants paid the usual half of a month of rent for a security deposit and were in the rental unit for a period of six months. The tenancy agreement itself explains what the Landlords agreed to do with the security deposit.

For the above reasons I find that the Act applied to this tenancy.

Settlement Agreement

During the course of the hearing the parties agreed to resolve the dispute. Pursuant to section 63 of the Act, I record the settlement in the form of this decision and a monetary order, as follows:

1. The parties agreed that in full and final settlement of all claims between them, the Landlords shall pay the Tenants the sum of \$1,100.00; and
2. The Tenants shall have a monetary order to enforce the settlement if required.

While the Landlords appeared to be agreeable to pay the Tenants this amount forthwith, I note that the monetary order may be enforced through the Provincial Court (Small Claims Division), if the Landlords refuse or neglect to pay the Tenants.

Conclusion

I found that the Act had jurisdiction in this tenancy and it was not a vacation rental, based on the facts before me.

The parties agreed to resolve all claims between them and that the Landlords would pay the Tenants \$1,100.00. The Tenants are issued a monetary order in this amount.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 30, 2015

Residential Tenancy Branch

