



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O, FF

### Introduction

This hearing convened as a result of an application for dispute resolution by property owners J.C. and E.A. for a determination of whether the *Residential Tenancy Act* applies to their fixed term vacation rental of several months.

J.C. and E.A. (collectively referred to as the “Owners”) attended the hearing, as did I.S. and M.S. (collectively referred to as the “Renters”).

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised by the parties.

During the hearing, J.C., referenced a draft lease agreement. As that document was not in evidence I directed J.C. to fax a copy to the Branch. J.C. complied with my direction and provided a copy the same day as the hearing. I confirm I have read that document since the hearing.

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.

### Issues to be Decided

1. Does the *Residential Tenancy Act* apply?
2. Should the Applicants recover the filing fee?

### Background and Evidence

J.C. testified that he and his wife, E.A., own a home in which is located a fully furnished rental suite. The Owners rent the basement suite through an online vacation rental company. J.C. further stated that the rate charged is dependent on the length of stay and season, and that the off season monthly rate for the rental unit is \$1,250.00 per month which includes utilities.

I.S. and his mother M.S. are citizens of Australia, maintaining a permanent residence in Australia. For approximately three years, they have traveled extensively, vacationing for extended terms in the Caribbean and North America.

The parties began communicating through email in September of 2015 regarding a longer term rental of the property owners' furnished vacation rental. That communication was provided in evidence. The communication indicates that the property owners asked for a \$4,000.00 deposit representing 25% of a proposed 13 month rental from December 11, 2015 to January 10, 2017. The communication and testimony of the parties confirms that the Renters sent \$6,000.00 which the Owners applied to the \$500.00 security deposit as well as to the ongoing monthly rent.

J.C. stated that their normal practice is to collect a damage deposit of \$500.00 and a cleaning fee of \$80.00 both of which are due on arrival, the latter of which is non-refundable.

J.C. testified that the longest term rental they had prior to this was for 2 months.

J.C. confirmed that when the Renters arrived they provided a welcoming basket; J.C. stated that they do not provide food to their customers on an ongoing basis.

The Renters moved into the rental suite in December of 2015.

J.C. testified that he had prepared a draft lease agreement which he sent to the Renters prior to their arrival, yet they refused to sign it.

J.C. stated that the Renters moved in and decided they did not want to stay for the 13 month term. J.C. further stated that once they moved in the Renters indicated they may

not be able to stay more than six months because to do so they would require an extension on their tourist visa. J.C. stated that he then informed the Renters that if they did stay beyond the six months the monthly rental amount would increase as the Renters would be staying during the middle of the vacation rental's high season.

Introduced in evidence was a letter dated January 9, 2016 wherein the parties agreed the rental arrangement would end on April 21, 2016 at which time the Renters would receive their \$500.00 deposit, provided there was no damage over and above normal wear and tear.

J.C. stated that the Renters are now leaving on April 21, 2016 as agreed. J.C. confirmed that he has been taking the monthly rent payment out of the \$6,000.00 deposit such that he has received pre-payment for the rental term. J.C. further stated that the intention is to go through the rental together to look at the condition on April 21, 2016 and return the \$500.00 deposit at that time.

The Renter, I.S. testified that he rented the unit via the internet in September of 2015. He stated that the property owners asked him for a \$4,000.00 deposit and he offered to pay \$6,000.00.

I.S. testified that J.C. then sent the draft lease agreement by email. I.S. stated that he had no problem with signing a lease, but he was concerned with the terms of the draft agreement citing it as being "ridiculous". I.S. confirmed he refused to sign the lease agreement as it appeared to involve terms outside of a vacation rental and beyond that which was agreed upon. I.S. stated that everything "came to a head" when he refused to sign the draft lease which had been emailed to them. I.S. stated that the only agreement between the parties was the one provided in evidence dated January 9, 2016.

I.S. further testified that the reference he made to the 6 month period, was really a comment, not an issue. He stated that he and his mother previously stayed in Canada for 21 months and he had no reason to believe that would not be possible this time .

I.S. stated that they did not ask for the *Residential Tenancy Act* to apply, nor does he believe it should apply to this vacation rental situation. He stated that he simply wanted to ensure that their \$500.00 deposit would be returned when they vacated the rental. He further stated that he wanted to ensure that they were permitted to be present during the move out condition inspection, which did not appear to be the property owner's intention as evidenced by the January 9, 2016 agreement.

### Analysis

After careful consideration of the evidence filed, the testimony of the parties and the *Residential Tenancy Act*, I find as follows.

The rental arrangement between these parties does not fall within the jurisdiction of the *Residential Tenancy Act* as it is more properly characterized as a vacation rental.

The *Residential Tenancy Act* does not apply to all rentals. Section 4(e) of the *Act* provides that vacation rentals fall outside the *Act's* jurisdiction and reads as follows:

#### **What this Act does not apply to**

##### **4 This Act does not apply to**

...

(e) living accommodation occupied as vacation or travel accommodation,

While the Owners prepared and delivered a draft lease agreement, the Renters refused to sign it; accordingly, I find that this document is not reflective of any mutual agreement between the parties or “meeting of the minds”.

Nevertheless, the draft lease agreement does provide insight into the Owner's intentions. While the agreement is titled “Residential Lease Agreement”, it contains clauses which are not permitted in a residential tenancy agreement such as: a two day restriction for guests; a requirement for indemnification of “Attorney Fees”; and a \$6,000.00 non-refundable deposit.

The Renters refused to sign the draft lease agreement stating that it was “ridiculous” and not reflective of the agreement between the parties.

At best the parties appear to have agreed on the premise to be rented and the monthly rent payable. It is uncertain whether they agreed upon the rental term. While it appears to have been the mutual intention of the parties initially to enter into a 13 month fixed term, this tentative agreement was displaced by the January 9, 2016 agreement to end the term on April 21, 2016.

While it is possible for the rental of a vacation rental property to fall within the jurisdiction of the *Residential Tenancy Act*, I find that this particular rental situation does not. The factors which influence my finding include the above, as well as the following:

- The Renters maintain a permanent residence elsewhere, and while they may rent vacation rentals for extended periods of time, there was no evidence they intended to make the subject property their home.
- The subject rental property is fully furnished and advertised through an online vacation rental business.
- The Owners charge different rates based on the length of stay.
- When the Renters indicated they may not be able to stay past six months, the Owners communicated that a higher amount would be charged for rent.
- The Owners provided the Renters with a welcoming basket upon arrival.

In all the circumstances I decline jurisdiction. Having been unsuccessful, the Applicant's request for recovery of the filing fee is also dismissed.

### Conclusion

The application is dismissed for want of prosecution.

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: March 22, 2016

---

Residential Tenancy Branch

