



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

An agent for the tenant and an agent for the landlord attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and give closing submissions.

The parties agree that all evidence has been exchanged, and all evidentiary material provided has been reviewed and is considered in this Decision.

At the commencement of the hearing the landlord's agent submitted that the *Residential Tenancy Act* does not apply, and therefore the Residential Tenancy Branch lacks jurisdiction. That is opposed by the tenant's agent, and is an issue to be decided.

### Issue(s) to be Decided

- Does the *Residential Tenancy Act* apply to this tenancy?
- Has the tenant established a monetary claim as against the landlords for return of all or part of the security deposit?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for double the amount of the security deposit, less the amount returned to the tenant?

### Background and Evidence

**The tenant's agent** testified that this fixed term tenancy began on October 1, 2015 to expire on November 30, 2015 and was extended to December 15, 2015, at which point the tenant moved out of the rental unit.

Two tenancy agreements were signed by the parties, and copies have been provided. The first is entitled: Guest Agreement, and is dated September 9, 2015. It states that the owner agrees to allow the guest to use and occupy the property for the period beginning at 4:00 PM on October 1, 2015 (Check-in Date) and ending at 11:00 a.m. on December 1, 2015 (the Departure Date), for the cost of \$5,323.50. It also speaks of non-refundable deposit and cancellation by the guest or owner. The copy provided has not been signed by either party.

The second is also entitled: Guest Agreement dated October 15, 2015 for the period beginning at 4:00 p.m. on December 1, 2015 (the Check-in Date) end ending at 11:00 a.m. on December 15, 2015 (the Departure Date), and the booking total for the rental term is \$999.50.

The tenant's agent also testified that there are no rental arrears. The agreements are silent as to when the rental amounts are due, however the landlords collected a security deposit from the tenant in the amount of \$999.50 on September 24, 2015. No move-in or move-out condition inspection reports were completed by the parties. The rental unit is a single family dwelling.

The tenant's agent further testified that on January 18, 2016 the landlord returned \$138.60 to the tenant. On January 20, 2016 the tenant sent to the landlord's agent a letter by registered mail which contained the tenant's forwarding address. The parties exchanged emails, copies of which have been provided, wherein the landlord wanted the tenant to pay for a damaged cooktop and lamp. However, the tenant didn't agree, and the landlord has not returned the balance of the security deposit and has not served the tenant with an application for dispute resolution claiming against the deposit. The tenant claims double the amount, less the portion returned.

Neither the landlord nor the tenant gave notice to end the tenancy, but the parties agreed on the move-out date of December 15, 2015. The tenant's agent testified that the landlords breached the agreements in many ways, firstly by charging the tenant's credit card rather than holding it, and the landlords charged \$860.90 against the tenant's credit card for a damaged lamp and cooktop. The tenant doesn't dispute breaking the lamp but disputes the charge of the landlord of \$170.98. It should only have cost about \$20.00, and the tenant didn't ever receive a receipt from the landlord. The charge for the cooktop was \$689.92 that the tenant denies scratching or damaging,

and the tenant's agent submits that it was in the same condition at move-out as it was at move-in.

The tenant's agent also submits that the tenant did not rent as a vacation rental, and has provided a copy of a Decision of the director which finds that although the landlords may have intended the rental unit to be used as a vacation rent, the agreement signed by the parties shows that the parties agreed at the time that the *Act* applies. Another Decision has been provided which deals with the agreements entered into by parties and Section 4 of the *Act*.

**The landlord's agent** submits that the *Residential Tenancy Act* does not apply to transitional or vacation rentals. The tenant was transitioning to British Columbia from another country, and a realtor assisted the tenant to find a place on a short-term basis. The Guest Agreements on file with the landlord's agent is signed by the parties.

The landlord is a vacation rental company. The landlord has provided copies of advertisements of the landlord's company that are clearly marked as vacation rentals, and lists of rental amounts by the day or by the month.

### Analysis

I have reviewed both Guest Agreements and I find nothing that indicates the *Residential Tenancy Act* applies. I do not accept the landlord's submission that it was intended as transitional housing for the tenant transitioning from another country. However, the landlord has provided the advertisements that are clearly marked as vacation rentals, and the advertised amounts on a monthly or per diem basis. The Guest Agreements specify a non-refundable deposit for less than 45 days notice of a cancellation, which is contrary to the *Residential Tenancy Act*. It also states that there will be no refunds for unused days or early departures, and that the landlord will only reimburse any rents paid by the landlord cancelling a reservation if the rental unit is uninhabitable. It also states that the owner may evict a tenant without prior notice and without refund, which is contrary to the *Act*.

The tenant's position is that because the tenant didn't intend to rent the rental unit as a vacation rental, the *Act* applies. However, I also find that the tenant rented the unit as advertised, by virtue of signing Guest Agreements with so many terms that are contrary to the *Residential Tenancy Act*. I also consider that the parties entered into 2 agreements for specific short-term periods and I find that the tenant did not intend to remain in the rental unit, but intended it to be a short-term place to stay until permanent housing was found and that neither party had any intention to enter into an agreement for this rental unit under the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, I find that the *Residential Tenancy Act* does not apply to this tenancy, and I decline jurisdiction.

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: October 28, 2016

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Residential Tenancy Branch