



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes: MNDC, MNSD, OLC, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$1000 for double the security deposit.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord as the landlord acknowledged service of the documents. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to the return of double the security deposit/pet deposit?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one month fixed term written agreement that provided that the tenancy would start on July 1, 2017 and end on July 31, 2017. The rent was \$3000 per month payable in advance on first day of the month. The tenant(s) paid a security deposit of \$500 at the start of the tenancy. .

The tenancy ended on July 31, 2017.

Preliminary Matter:

Both parties presented evidence and submissions on whether the Residential Tenancy Act applies. This is a disputed issue and I reserved on making a decision at the hearing.

The landlord submits that this is not a Residential Tenancy matter and that the Residential Tenancy Act does not apply as the agreement provides that it is a Travel Accommodation Tenancy Agreement which excludes the Act because of section 4 which provides as follows:

4 This Act does not apply to

....

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

Policy Guideline 27 includes the following:

"2. VACATION ACCOMMODATION

The Residential Tenancy Act provides that the Act does not apply to vacation or travel accommodation. However, the Act would apply to summer cottages and winter chalets that are rented other than on a vacation or travel basis. For example, a winter chalet rented for a fixed term of one year is not rented on a vacation basis."

The tenant submits the Residential Tenancy Act does apply. The definition section of the Act defines "tenancy agreement" as follows

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 5 of the Act provides as follows:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

The agreement used by the parties was titled Travel Accommodation Tenancy Agreement. The terms states the Residential Tenancy Act does not apply and that it is being utilized for vacation or travel accommodation. The landlord submits the security deposit was only \$500 which is considerably less than what the landlord could charge under the Residential Tenancy Act and that there was an automatic \$150 cleaning charge that could be deducted from the deposit at the end of the tenancy. The tenant testified this was her only residence when she was renting it and she was not travelling or on vacation. Further it was not furnished and she paid the hydro, internet and cable vision. The landlord did not charge GST and did not clean on a daily basis.

This is a disputed matter. After carefully considering all of the evidence and submissions of the parties I determined that on the facts of this case the Residential Tenancy Act applies. I determined there are too many factors which suggest a tenancy rather than vacation or travel accommodation including the following factors:

- The tenant was not on vacation. This was her sole residence at the time.
- The rental unit was not furnished. She had her furniture in it.
- The tenant paid for hydro, internet and cable.
- The landlord did not charge GST. .

Settlement:

At the end of the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Act as follows:

- a. The landlord shall pay to the Tenant the sum of \$475,
- b. The parties request that the arbitrator issue a monetary order in this sum.
- c. This is a full and final settlement and each party releases and discharges the other from all further claims with respect to this tenancy.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$475.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on both parties.

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: November 29, 2017

Residential Tenancy Branch