



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL
 MNSD, FFT

Introduction

This hearing convened as a result of cross applications. In the Application filed November 15, 2017, P.P. claimed monetary compensation from R.L. as well as recovery of the filing fee. In the Application for Dispute Resolution filed by R.L. she requested return of the security deposit paid and to recover the filing fee.

The hearing was conducted by teleconference on June 27, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to 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.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter--Jurisdiction

The parties agreed that the Respondent (Applicant by Cross Application), R.L., rented a furnished suite from P.P. for the time period of October 17, 2017 to October 31, 2017.

The Tenant testified that she was on vacation in the city in which the rental unit was located. She was previously staying in a hotel and saw the ad for the rental unit on a

popular online buy and sell site. The parties agreed that the rental unit was fully furnished.

The power and authority of the Residential Tenancy Branch is derived from the *Residential Tenancy Act*. The dispute resolution process does not create a court and as such, Arbitrators delegated under the *Act*, do not have inherent powers arising under the common law which are possessed by a judge; rather, Arbitrators must only assume jurisdiction over tenancy disputes which are governed by the *Residential Tenancy Act*.

Section 4 of the *Residential Tenancy Act* provides as follows:

What this Act does not apply to

4 This Act does not apply to

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,
- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,
- (e) living accommodation occupied as vacation or travel accommodation,
- (f) living accommodation provided for emergency shelter or transitional housing,
- (g) living accommodation
 - (i) in a community care facility under the *Community Care and Assisted Living Act*,
 - (ii) in a continuing care facility under the *Continuing Care Act*,
 - (iii) in a public or private hospital under the *Hospital Act*,
 - (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
 - (v) in a housing based health facility that provides hospitality support services and personal health care, or
 - (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,
- (h) living accommodation in a correctional institution,

- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,
- (j) tenancy agreements to which the [Manufactured Home Park Tenancy Act](#) applies, or
- (k) prescribed tenancy agreements, rental units or residential property.

Section 4(e) of the *Residential Tenancy Act* definitively provides that the *Act* does not apply to vacation or travel accommodation which is being used for vacation or travel purposes.

Residential Tenancy Branch Policy Guideline 27—Jurisdiction provides further guidance on this issue and provides in part as follows:

Vacation or Travel Accommodation and Hotel Rooms

The RTA does not apply to vacation or travel accommodation being used for vacation or travel purposes. However, if it is rented under a tenancy agreement, e.g. a winter chalet rented for a fixed term of 6 months, the RTA applies.

Whether a tenancy agreement exists depends on the agreement. Some factors that may determine if there is a tenancy agreement are:

- ☐ Whether the agreement to rent the accommodation is for a term;
- ☐ Whether the occupant has exclusive possession of the hotel room;
- ☐ Whether the hotel room is the primary and permanent residence of the occupant.
- ☐ The length of occupancy.

Even if a hotel room is operated pursuant to the *Hotel Keeper's Act*, the occupant is charged the hotel room tax, or the occupancy is charged a daily rate, a tenancy agreement may exist. A tenancy agreement may be written or it may be oral.

A person occupying a room in a residential hotel may make an application for dispute resolution, without notice to any other party, requesting an interim order that the RTA applies to that living accommodation

In the case before me the parties agreed that the agreement to rent the accommodation was for a two week term. The rental unit was fully furnished and offered for a very short term.

The most significant factor in my determination is that the Tenant was on vacation, and as such the rental unit was not her primary or permanent residence, rather it was used for holiday purposes.

While the parties entered into a formal written residential tenancy agreement and performed a move in and move out condition inspection report, the circumstances of the living arrangements is more akin to a vacation rental than a residential tenancy.

In all the circumstances I find that I do not have jurisdiction to consider the issues between the parties as the rental accommodation is vacation or travel accommodation, not a rental unit in a residential tenancy.

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: June 27, 2018

Residential Tenancy Branch