



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

On May 12, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for compensation of one month’s rent from the Landlords. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The Tenant testified that he exchanged his documentary evidence with the Landlord.

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 Matters

The Landlord and the Tenant agreed that the Application should be amended to remove the commercial name from the Tenant’s Application and instead, have both Landlord’s names. In accordance with Section 64 of the Act, I have amended the Application to show there are two Landlords as Respondents.

The Landlord testified that he did not forward a copy of the Home Stay Application to the Tenant. The Tenant; however, acknowledged that he was aware of the document and consented to it being entered as evidence.

In preparation for the hearing, the Landlords submitted evidence and argued that the Residential Tenancy Board does not have jurisdiction over this matter. As a result, I will

first address jurisdiction and, if appropriate, address the Tenant's issues as noted in his Application.

Issues to be Decided

Does the Residential Tenancy Branch have jurisdiction over this matter?

If so, should the Tenant receive a Monetary Order for compensation for one month's rent from the Landlords?

Background and Evidence

The Tenant and the Landlord agreed that the Tenant completed a "Homestay in (city removed) Application Form" (the "Homestay Application") and provided it to the Landlords before entering a verbal agreement that included the following:

As of May 2, 2017, the Tenant would live in the rental house for one year and have exclusive occupation of one of the bedrooms while sharing the kitchen and bathrooms with other students. The Tenant would pay a monthly rent of \$800.00 that included the room and three meals a day. The Landlord collected a \$400.00 security deposit from the Tenant and at the end of the tenancy, on April 30, 2018, returned the security deposit to the Tenant.

The Landlord testified that on February 15, 2017, the Tenant signed a one-year Homestay Application. As the Landlords provided food, care and oversight of the Tenant, he felt that the agreement fell outside of the Act.

The Landlord stated that they hired a worker to live in the rental unit to provide oversight and meals to the students. The Landlords do not live in the rental unit. The Landlords did not want to continue the "homestay" arrangements beyond the end of the school year and as a courtesy, on February 26, 2018, emailed the students, including the Tenant, to vacate the premises by April 30, 2018, in accordance with the one year indicated on the Homestay Application. In the email, the Landlords indicated that they would "be putting the house on market for sale" in April. The residential property is currently for sale.

The Tenant testified that he shared the rental house with other students and that his rent included meals that were cooked by a caretaker. The Tenant expected that his tenancy would last longer than a year, although, did not have any evidence to indicate that it would. The Tenant stated that he received the two-month notice and moved out of the rental unit on April 30, 2018 in accordance with the Landlords' direction.

The Tenant stated that after he moved out of the rental unit, he conducted some research with the Residential Tenancy Branch and learned that he may be due

compensation for one months rent because the Landlords had ended the tenancy by serving him a Two-Month Notice to End Tenancy.

Analysis

Section 4 of the Act provides an outline for the various situations where the Act does not apply. The above undisputed testimony of both the Landlord and the Tenant indicated that a homestay, where a living accommodation in which the Tenant shares bathroom or kitchen facilities with the owner of the accommodation, does not apply. Further, a (mostly) verbal tenancy agreement was established that provided the Tenant a right to possess a rental unit, the use of common areas and services, and to pay the Landlords rent for these purposes. Because this situation between the Tenant and the Landlords is not defined under Section 4 of the Act and that a verbal tenancy agreement was established as defined in Section 2 of the Act, I find that the Residential Tenancy Branch does have jurisdiction over this matter and the *Residential Tenancy Act* is the appropriate legislation to apply.

The Tenant made an Application for monetary compensation based on Section 51(1) of the Act which authorizes a Tenant who receives a Notice to End Tenancy under Section 49 to receive one month's rent from the Landlord. When considering whether the Tenant should receive one month's rent, I reviewed Section 49(7) of the Act where it states that a notice must comply with Section 52 of the Act.

Section 52 of the Act requires that any Notice to End Tenancy issued by a Landlord, in order to be effective, must be signed and dated by the Landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form.

The notice that the Landlords provided to the Tenant, and the rest of the students, was an email advising them that the Landlords would "be ending your Home Stay...at the end of April 30, 2018". The email did not state the address of the rental unit, did not state the grounds for ending the tenancy and was not in the approved form. As a result, I find the notice, issued by the Landlords on February 26, 2018, did not comply with the requirements set out in Section 52 of the Act and therefore, was not effective.

As the notice was not effective for many reasons, the Tenant did not have to comply with the notice and did not have to vacate the rental unit based on that notice. Remedies to cancel a Notice to End Tenancy are available to the Tenant under the *Residential Tenancy Act*.

After reviewing the above testimony, evidence and legislation, I find that the Tenant failed to provide sufficient evidence of a loss. The Tenant paid rent for the month of April 2018 and in return, had a place to live and had meals provided. Because I found that the notice the Landlords sent to the Tenant to advise of the end of tenancy was not effective, I find that Section 51(1) of the Act does not apply and as a result, the Tenant

should not receive a Monetary Order for compensation for one month's rent from the Landlords.

Conclusion

I find that the tenancy relationship between the Landlords and the Tenant falls under the jurisdiction of the Residential Tenancy Branch.

I find that the Two-Month Notice to End Tenancy served by the Landlords to the Tenant was not effective, therefore, not enforceable. As a result, the Tenant should not receive a Monetary Order for compensation for one month's rent from the Landlords. I dismiss the Tenant's Application without leave to reapply.

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: July 04, 2018

Residential Tenancy Branch