



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALL SEASON MOUNTAIN HOLIDAYS INC
and [TENANT NAME SUPPRESSED TO PROTECT PRIVACY]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened in response to an application from the tenant pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- a return of the filing fee pursuant to section 72 of the *Act*; and
- an order directing the landlord to return the security deposit pursuant to section 38 of the *Act*.

Both the landlord, M.G. (the “landlord”) and the tenant appeared at the hearing by way of conference call. The landlord was assisted by a third party as she called into the hearing from Mexico. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Jurisdiction

Following opening remarks I explained to the tenant that I had some concerns related to my ability to consider the matter in light of the *Residential Tenancy Act*. Both the landlord and the tenant acknowledged that this accommodation was rented as a short-term vacation rental. On September 18, 2017 the parties signed a document titled “Vacation Property License to Occupy.” This document noted the ‘lease’ ran from January 1, 2018 to April 30, 2018. The tenant explained that the agreement was extended a further month to June 2018. The document describes a “rate of term” of \$5,000.00 per month with a Damage/Pet deposit of \$2,500.00 paid upon signing the document.

The document is signed by both parties and contains various terms and conditions. Amongst the terms and conditions listed are ones described as ‘Cancellation Policy’,

and 'Customer Discretion.' The tenant described the premises as her sole residence for the time in which she was in occupation, saying it housed her family and she described her child's attendance at a local school.

In addition to the above noted terms and conditions, the document signed by the parties contains very specific information regarding parking, loss of property/personal possessions, rules around access to the property by staff, service/repairmen, and a term which reads as follows, "I have read and agree to abide by all the terms and conditions as outlined on this document and Confirm property is to be used as Vacation residence and will not be sublet in any form. [redacted] does not assume any liability for injuries, thefts, or damages incurred on the premises."

Section 4(3) of the *Act* states, "This Act does not apply to living accommodation occupied as vacation or travel accommodation." While *Residential Tenancy Policy Guideline #19* notes, "The *Residential Tenancy Act* does not apply to living accommodation occupied as vacation or travel accommodation. If a property owner or their agent rents out their unit or property as a vacation or travel accommodation, they have no recourse through the Residential Tenancy Branch for relief under the Act." This issue is expanded upon by *Policy Guideline #27* which examines the issue of jurisdiction in detail. It states as follows, "The Act 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."

After having carefully considered the document titled "Vacation Property License to Occupy" submitted into evidence by the tenant, and following a review of the appropriate legislation and the applicable *Policy Guidelines*, I find I have no jurisdiction to consider the tenant's application. I find the property was rented to be temporary accommodation occupied as vacation or travel accommodation as contemplated by section 4(3) of the *Act*. Furthermore, I find the various terms and conditions to which the parties agreed in their "Vacation Property License to Occupy" supports the conclusion that this property was not rented as a tenancy, but rather as a vacation rental. Specifically, I find the explicit statement noting, the "property is to be used as Vacation residence" along with the rules contained in the 'Cancellation Policy' and 'Customer Discretion' to fall beyond the scope of what would typically be contained in a tenancy agreement. For these reasons, I decline jurisdiction on the matter.

As the tenant was unsuccessful in her application, she must bear the cost of her own filing fee.

Conclusion

I decline to rule on this matter as I have no jurisdiction to consider this application.

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: January 23, 2019

Residential Tenancy Branch