



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT**

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- A monetary order for compensation pursuant to section 67; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Legal counsel for the respondent company (“respondent”) and the applicant both attended the hearing. Both parties were satisfied with the service of the application for dispute resolution and exchange of evidence. The hearing process was explained, and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is referenced in this decision.

Preliminary issue

Counsel for the respondent advised me the matter of jurisdiction to hear this matter by an arbitrator of the Residential Tenancy Branch had previously been raised at other hearings involving her client, the respondent. As such, I advised the parties that I must first turn my mind as to whether I am able to accept jurisdiction before hearing the merits of this application. The parties were informed of this during the hearing and were given the opportunity to provide evidence and make submissions on the issue of jurisdiction.

The parties agree to the following facts. The applicant is a home owner; he suffered damage to his home for which he was required to live elsewhere during the remediation process. The applicant's insurance company contacted the respondent and paid for the temporary accommodation supplied by the respondent.

When moving into the temporary accommodation, the applicant was required to provide his credit card number as security for any damage or loss. On May 25, 2018, the applicant signed a '*Guest Registration Card*', and received a document entitled '*Important Information Regarding your Stay*'. Pursuant to a term noted on the '*Important Information*' document, the applicant was required to provide a \$500.00 pre-authorization drawn down on his credit card to 'validate [his] card' for any damages and missing items during his stay. The credit card number was noted on the *Guest Registration Card*.

The duration of the stay in the temporary accommodations was indeterminate as it was unknown as to the timeline for remediation. After the minimum period of 30 days, the stay could be extended or ended with a seven-day written notice.

At the conclusion of the temporary stay on October 21, 2018 when the applicant was ready to return to his home, the respondent charged the applicant's credit card for alleged damages to the rental unit. On November 29, 2018, the tenant filed for dispute resolution before the Residential Tenancy Branch to dispute these charges.

Analysis

The *Act* defines a tenancy agreement as 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 license to occupy a rental unit.

Policy Guideline 9 titled "Tenancy Agreements and Licenses to Occupy" states that a license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time.

Under a tenancy agreement, the tenant is given exclusive possession for a term, which can include a month to month term. The guideline continues to state that if there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise.

In order to determine whether a particular arrangement is a license to occupy or a tenancy, an Arbitrator will consider what the parties intended, and all of the circumstances surrounding the occupation of the premises. Some of the factors that may weigh against finding a tenancy are:

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The occupier pays property taxes and utilities but not a fixed amount for rent.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.

The above factors by themselves are not sufficient in finding that a tenancy has not been established under the Act. As the Guideline points out, the circumstances of each situation must be carefully considered. Therefore, I turn to the circumstances and evidence before me to make the following findings on jurisdiction in this case.

I find there was no intention for the parties to engage in a tenancy as contemplated by the Act. I make this finding for the following reasons.

First, notwithstanding that tenancies under the Act may be established by oral agreement, I find the '*Guest Registration Card*' and the '*Important Information Regarding your Stay*' documents do not constitute a tenancy agreement. These documents do not include any of the standard terms of a tenancy agreement required pursuant to Section 13 of the Act and do not detail any fixed amount of monthly or periodic rent and the date it was payable. The documents are also void of any information which provides clarity on the length of the tenancy, namely whether it was periodic or fixed term.

Second, tenancies established under the Act allow for payment of a security deposit that cannot exceed half a month's rent. However, the documents furnished by the parties for this hearing do not provide for the requirement of a security deposit, and neither was one paid for in this tenancy. The evidence provided by the parties indicates

the credit card pre-authorization was done to 'validate [the applicant's] card'. I find this is another indicator that a tenancy under *Act* had not been established.

Third, I find the Applicant's insurance company had significant involvement in this arrangement. The insurance company approved the Respondent and paid for the duration of the Applicant's stay. The addition of a third party paying for the temporary accommodations, without status as either a landlord or a tenant, provides further justification for my decision that a tenancy has not been established.

Finally, the parties agreed that the accommodation could be ended with seven days written notice. Periodic tenancies under the *Act* must be ended with a full month of written notice or pursuant to a fixed end date of the tenancy. Without the ability to end the 'tenancy' with a minimum of one month written notice, I find a tenancy did not exist.

I find the arrangement between the parties akin to short-term accommodation, similar to a motel or hotel. This is evident in the '*Guest Registration Card*' document which requires a credit card number for charges incurred or liabilities that arise as a result of the stay and provides a check-in and check-out time.

Based on the foregoing analysis, I find the *Act* does not apply to this matter and I have no jurisdiction to render a decision.

Conclusion

For the reasons set out above, I decline to hear the application for lack of 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: April 1, 2019

Residential Tenancy Branch