



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 29 minutes.

The tenants confirmed receipt of the landlord's application for dispute resolution and notice of hearing and the landlord confirmed receipt of the tenants' evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's application and notice of hearing and the landlord was duly served with the tenants' evidence package.

The tenants stated that they did not receive a copy of any evidence from the landlord. The landlord said that he only served photographs to the tenants, not any late evidence. As I refused jurisdiction in this matter, I do not find it necessary to record findings of service regarding the landlord's evidence, as I did not consider it at the hearing or in this decision.

Preliminary Issue – Jurisdiction to hear Matter

Both parties agreed to the following facts. The tenants did not live at the rental unit during this tenancy. The tenants sublet the rental unit to students, as part of a housing service business, where the tenants received a commission from the rent paid. While the tenants did not sign a commercial tenancy agreement drafted by the landlord, they signed a residential tenancy agreement on the standard Residential Tenancy Branch (“RTB”) form. Both parties attended a previous RTB hearing on August 9, 2019, where a settlement was reached between the parties and a commercial tenancy and jurisdiction issue were not raised by the parties to the Arbitrator. The file number for that hearing appears on the front page of this decision.

The landlord maintained that I did not have jurisdiction to hear this application. He claimed that this was a commercial tenancy, excluded by the *Act*. He said that he only signed the residential tenancy agreement on the RTB form because the tenants refused to sign the commercial agreement that he drafted. He said that the tenants were using the rental unit for business purposes.

The tenants maintained that I did have jurisdiction to hear this matter. They claimed that even though they sublet the rental unit to students for business purposes and earned a commission from the rent, they signed a residential tenancy agreement on the RTB form because it was a residence for the students.

Section 4(d) of the *Act*, outlines a tenancy in which the *Act* does not apply:

- 4 This Act does not apply to*
(d) living accommodation included with premises that
(i) are primarily occupied for business purposes, and
(ii) are rented under a single agreement,

I find that this application is excluded by section 4(d) of the *Act* as the rental unit was primarily occupied for business purposes and rented under a single agreement. There is only one written tenancy agreement, signed by the tenants, not the students living in the rental unit. The tenants did not live in the rental unit. The tenants operate a housing services business for students, where they earn a commission from the rent paid. Both parties agreed that the unit was rented to the students for business purposes. Although the parties used a standard RTB tenancy agreement form, this does not mean that it is a residential tenancy.

For the above reasons, I find that this is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the landlord's application. I informed both parties of my decision verbally during the hearing.

I notified the landlord that he could pursue his claims at the Provincial Court of British Columbia or the Supreme Court of British Columbia, if he wished to do so.

Conclusion

I decline jurisdiction over the landlord's application. I make no determination on the merits of the landlord's application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent 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: January 16, 2020

Residential Tenancy Branch