



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S FFL

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the respondent pursuant to section 72.

The respondent did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The applicant attended, assisted by their family member, and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The applicant gave evidence that they served the respondent with the application for dispute resolution and evidence by registered mail on or about September 16, 2019. The applicant provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the respondent was deemed served with the materials in accordance with sections 88, 89 and 90 of the Act on September 21, 2019, five days after mailing.

Issue(s) to be Decided

Do I have jurisdiction under the *Act* to consider the application for dispute resolution? If so, is the applicant entitled to a monetary award as sought? Is the applicant entitled to retain the security deposit for this tenancy? Is the applicant entitled to recover the filing fee from the respondent?

Background and Evidence

The applicant gave undisputed evidence regarding the following facts. The rental unit is the applicant's primary and only residence. The applicant travels during the summer months and rather than leave the property vacant, they advertise it as available for short-term occupation. The applicant entered an agreement with the respondent where the suite could be occupied for 2 months, from July 1, 2019 to September 1, 2019. Monthly rent was set at \$6,500.00 and a deposit of \$4,000.00 was collected.

The applicant submits that the suite was left in a state of disarray after the occupation and they incurred considerable damages and loss.

Analysis

Section 4(c) of the *Act* sets out living accommodations to which the *Act* does not apply. It reads in part as follows:

- 4 *This Act does not apply to...*
 (e) living accommodation occupied as vacation or travel
 accommodation,...

The applicant states in their application, "Rented fully furnished waterfront home in West Van as summer holiday rental." The applicant gave evidence that they advertise the rental suite as a short-term vacation accommodation and the suite was offered fully furnished. The rental suite is ordinarily occupied by the applicant who vacates the suite during the summer months while traveling but has no other place of residence.

While the parties signed a tenancy agreement using the prescribed Residential Tenancy form, I find that the nature of this arrangement does not have the characteristics of a tenancy. Based on the evidence of the applicant it is apparent that this was intended to be a vacation accommodation. The applicant offered the suite fully furnished with the intention that they would reoccupy the suite after a short term. Merely recording the arrangement on a tenancy form or preparing an inspection report on the prescribed form does not give rise to a

tenancy agreement. The description of the arrangement and the intention of the parties is more in line with a vacation accommodation rather than a tenancy.

Under these circumstances and based on the evidence before me, I find that the *Act* does not apply to this arrangement between the parties. I therefore have no jurisdiction to render a decision in this matter.

Conclusion

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

This finding does not preclude the right of the parties to bring this matter before an appropriate court with 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 20, 2020

Residential Tenancy Branch