Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT MNSD FFL MNDL-S MNRL-S**

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "**Act**"). MH and BH's application (collectively, the "**Hs**") for:

- authorization to retain all or a portion of the DC and JC's (collectively, the "**Cs**") security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for damage to the rental unit in the amount of $2,147.50 pursuant to section 67;
- authorization to recover the filing fee for this application from the Cs pursuant to section 72.

And the Cs' application for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $7,200 pursuant to section 67;
- authorization to recover the filing fee for this application from the MH and BH pursuant to section 72.

The Cs' application previously came to a hearing on October 17, 2019 and was adjourned to be heard at the same time as the Hs' application today. I issued an interim decision following the October 17, 2019 hearing setting out the basis for the adjournment, which I will not repeat here.

DC attended the hearing on behalf of both himself and JC. MH and BH both attended the hearing. All parties were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue - Jurisdiction

In their response to the Cs' application, the Hs' asserted the unit in question (the "**Unit**") was a vacation property, and therefore I did not have jurisdiction to hear the application. I understand that the Hs brought their own application as a precaution in the event that I found I did have jurisdiction.

Section 4(e) of the Act states:

> **What this Act does not apply to**
> **4** This Act does not apply to
> […]
> (e) living accommodation occupied as vacation or travel accommodation,

MH testified that she listed the Unit for rent on the VRBO.com website (Vacation Rentals by Owners). She testified that she also lists the Unit for rent on AirBnB. She testified that she has rented out the Unit as a vacation rental since 2005. She submitted several online reviews of the Unit from past occupants. She testified that DC contacted her through the VRBO website to inquire if the Unit was available for rent for an extended period of time.

DC agreed that he located the Unit on the VRBO website, and that he contacted the Hs through that site. However, he testified that the Hs asked that he arrange to rent the Unit outside of VRBO's standard procedures. He suggested that their reason for doing this was to avoid paying VRBO its fee for facilitating the rental. MH agreed that the parties rented out the Unit outside of the usual VRBO process, but did not confirm the reason suggested by DC.

In any event, the parties entered into a written agreement, titled "Owner Contract // Guest Contract" (the "**Contract**"), whereby the Cs would rent the Unit from the Cs from February 1, 2019 to May 31, 2019. The Unit was fully furnished and was a basement suite of a single-detached home. For reasons not relevant to this analysis, the Cs vacated the Unit at the end of April 2019.

The Contract includes terms whereby:

1) the Cs will provide a security/ pet deposit of half a month's rent;
2) the Hs will to do all maintenance;
3) the Hs requires a guest is at least 21 years old; and

4) the Hs may charge a monthly cleaning fee of $50 and a move-out cleaning fee of $200, to be deducted from the deposit which would be deducted from the deposit.

At the hearing, the parties agree that the Hs agreed to waive the monthly cleaning fee. However, the parties differ as to this waiver extended to the move-out cleaning fee.

DC testified that he and his wife needed to stay in the Unit on a temporary basis, while their house was being renovated. He argued that the Contract does not refer the Unit as a vacation accommodation, and as such the Unit should not be considered one.

Policy Guideline 27, in part, states:

> **Vacation or Travel Accommodation and Hotel Rooms**
>
> The RTA 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. Some factors that may determine if there is a tenancy agreement are:
> - Whether the agreement to rent the accommodation is for a term;
> - Whether the occupant has exclusive possession of the hotel room;
> - Whether the hotel room is the primary and permanent residence of the occupant.
> - The length of occupancy.

I find that the Contract is not a “tenancy agreement”. It is a bespoke document, not in the approved form of a tenancy agreement, which contains non-standard terms, namely, the terms relating to the cleaning fee, and age requirement of the renter.

I find that the term of the Contract was four months. I find that this is a short term, relative to the rental of rental units under the Act. I find that the length of the occupancy of the Unit by the Cs was three months. Again, I find that this is a relatively short occupancy. These factors weigh in favour of finding that the Unit is a vacation or travel accommodation.

I find that the Unit was not the primary and permanent residence of the Cs. I find that their stay in the Unit was temporary, and during their stay, they maintained their primary

resident, which was undergoing renovations. This factor weighs in favour of finding that the Unit is a vacation or travel accommodation.

I find that the Cs had exclusive occupancy of the Unit. This factor weighs in favour of finding that the Unit is not a vacation or travel accommodation.

In addition to the above-noted factor, I also find the following facts favour finding that the Unit is a vacation or travel accommodation:

- In an email dated February 25, 2019, DC refers to the Unit as a “temporary home”;
- In an email dated March 8, 2019, DC stated that the Cs could vacate the rent unit the following date;
- the Unit was fully furnished;
- the Unit was advertised for rent on a vacation accommodation rental website; and
- the Hs have rented out the Unit as a vacation accommodation since 2005.

I am not persuaded by DC’s argument that since the parties did not use the VRBO processes to rent out the Unit that this means the Unit ceases to be a vacation or travel accommodation. I find it likely that Hs wanted to avoid using the VRBO to rent the unit so as to avoid paying VRBO a portion of the rent collected from the Hs. This does not mean that the Hs intended on renting out the Unit pursuant to the Act, however. It is not a requirement that a vacation or travel accommodation be rented out using a service such as VRBO.

As such, after weighing the aforementioned factors, I am satisfied that the Cs were occupying the Unit as a vacation or travel accommodation, and I find that I do not have jurisdiction to hear either of the applications.

The parties will have to seek a different forum to resolve their disputes.

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 22, 2020

Residential Tenancy Branch