



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO INN
and [tenant name suppressed to protect
privac

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The "male tenant" did not attend this hearing, which lasted approximately 25 minutes. The landlord's agent ("landlord") and the female tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the property manager and had authority to represent the landlord company named in this application. The landlord confirmed that the landlord company had permission to represent the owner of this rental unit. The tenant confirmed that she had permission to represent the male tenant at this hearing (collectively "tenants").

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

Preliminary Issue – Jurisdiction to hear Matter

During the hearing, I asked both parties to provide their submissions on jurisdiction, as the landlord verbally raised the issue at the hearing.

The landlord confirmed that this rental unit is vacation and travel accommodation and excluded by section 4(e) of the *Act*. The landlord indicated that the Residential Tenancy Branch (“RTB”) could not deal with this matter. She stated that the tenants signed a document entitled “furnished travel accommodation tenancy agreement,” which includes a clause at section 1 and page 2, that the *Act* does not apply and the RTB does not have jurisdiction. The tenant agreed that both tenants initialled beside this provision and signed the tenancy agreement. The landlord said that this was temporary accommodation for a fixed term of two months from August 1 to September 30, 2019, not the permanent residence of the tenants.

The tenant claimed that the RTB has jurisdiction to deal with this application and the *Act* applied to this tenancy. She said that she signed a tenancy agreement, paid rent on a monthly basis, and paid security and pet damage deposits to the landlord. She testified that she did not know what she was signing, as the landlord did not explain the tenancy agreement to her. She stated that if this was an Airbnb vacation situation, she would have had to pay all of the rent at the beginning, rather than on a monthly basis. The landlord disputed this, stating that if the term was for longer than one month on Airbnb, the tenants would have the option to pay on a monthly basis rather than all at once.

The tenant claimed that the tenants were not on vacation or traveling, while staying at the rental unit. She maintained that this was a short-term rental, after selling her apartment on a quick completion date and waiting to move into another unit, which was available on September 15, 2019. Both parties confirmed that the tenants lived at the rental unit from August 1 to September 14, 2019. The tenant claimed that the tenants have lived in this same City for over 20 years and she told the landlord this fact at the beginning of the tenancy. Both parties agreed that the tenants had exclusive possession of the rental unit.

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

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

Residential Tenancy Policy Guideline 27 discusses factors to consider when determining whether the rental unit is occupied for vacation or travel accommodation or under a standard residential tenancy agreement:

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 this rental unit was provided on a temporary basis to the tenants for vacation or travel accommodation. The tenants signed an agreement that is titled “furnished travel accommodation.” The tenants both initialled beside section 1 at page 2 of the agreement which clearly and unequivocally indicates that the *Act* does not apply and the RTB does not have jurisdiction. While this is not conclusive or determinative, it is a factor to consider. Although the tenants claim they did not know what they were signing and it was not explained to them, ignorance of the law is no excuse. The landlord is not required to explain the agreement to the tenants; it is up to the tenants to read the agreement and obtain legal advice if required.

The tenant agreed that this was temporary accommodation while waiting for a new unit to be ready, after the tenants sold their apartment. This was not the permanent residence of the tenants. It was a short and temporary 1.5 month tenancy, that was originally a fixed term of two months as per the tenancy agreement. Simply because the tenants paid security and pet damage deposits, as well as monthly rent, does not mean that this is not vacation or travel accommodation.

On a balance of probabilities and for the reasons stated above, I find that this rental unit is living accommodation occupied as vacation or travel accommodation. The *Act* specifically excludes living accommodation occupied for vacation or travel accommodation. Accordingly, I find that I am without jurisdiction to consider the tenants’ application because it is excluded by section 4(e) of the *Act*.

For the above reasons, I find that this is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the tenants’ application. Nothing in my decision prevents the tenants from advancing their claims before a Court of competent jurisdiction.

Conclusion

I decline jurisdiction over the tenants' application.

I make no determination on the merits of the tenants' 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: March 5, 2020

Residential Tenancy Branch