



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. An advocate for the tenant also attended the hearing.

Both parties agree that the landlord was served with this application for dispute resolution via registered mail in January of 2021. I find that the landlord was served in accordance with section 89 of the *Act*.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

Preliminary Issue- Jurisdiction

Section 4(e) of the *Act* states:

This Act does not apply to

(e) living accommodation occupied as vacation or travel accommodation

The tenants testified that they are Canadians who reside in the United States of America. The tenants testified that they returned to Canada to visit family and “escape the pandemic”. The tenants testified that they maintained their primary home in the United States of America.

Both parties agree to the following facts. The tenants found the subject rental property for rent on air b n b and contacted the landlord directly to enquire about renting the property. The parties entered into a short-term rental agreement, outside the air b n b platform, for the tenants to rent the property from November 24, 2020 to January 1, 2021.

The tenants testified that they moved out of the subject property on December 1, 2020 because it was smaller than expected, not an entire house as expected, overpriced and because tenant M.B. had an allergic reaction. Both parties agree that the tenants informed the landlord of same on November 28, 2020. The tenants are seeking the return of rent paid to the landlord (\$6,200.00) less \$1,700.00 for the week they resided at the property and less the landlord’s cleaning fee of \$200.00, for a total of \$4,300.00.

The advocate submitted that because the parties signed the short-term rental agreement outside of air b n b, the landlord brought the short-term rental agreement under the jurisdiction of the *Act*.

Residential Policy Guideline #27 states:

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.

Based on the testimony of the tenants, I find that the subject property was not the tenants’ primary or permanent residence because they testified that their primary and permanent residence was in the United States of America. I find that the primary

purpose of occupying the subject property was for travel/vacation purposes because the tenants testified that they travelled to Canada to visit family and to “escape the pandemic”; which I find is a different purpose than finding permanent accommodation. I find that the tenants did not intend to permanently reside at the subject property as they maintained their primary residence in the United States of America.

The agreement entered into evidence is also not in the form of a tenancy agreement. The first page appears to be a booking confirmation stating the check in and out dates and the total fees payable. The second page is titled “Rental Rules/Contract” and references the check in and out times, refund policy on cancellations, and a two-night minimum stay. While the form and content of the rental agreement is not solely determinative on the type of use a property is rented for, the contents of the agreement entered into evidence support the finding that neither party intended on entering into a residential tenancy agreement, but rather a vacation rental agreement.

Based on my above findings, I find that the agreement between the parties was a short-term vacation rental agreement. I find that the short length of the agreement (less than two months), supports the finding that the agreement was a short-term vacation rental and not a residential tenancy agreement.

I do not agree with the advocate’s submission that signing the agreement outside of the air b n b framework brings the agreement under the jurisdiction of the *Act*. Section 4(e) of the *Act* clearly states that this Act does not apply to living accommodation occupied as vacation or travel accommodation. Section 4(e) of the *Act* does not refer to one specific booking platform or type of platform, but rather to the type of use of the property. I have found that tenants used the property as a vacation/travel rental, not as a permanent and primary residence. I therefore find that I do not have jurisdiction to hear the tenants’ claim, pursuant to section 4(e) of the *Act*. The tenants’ claim is dismissed without leave to reapply for lack of jurisdiction.

Conclusion

The tenants’ claim is dismissed without leave to reapply 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: May 07, 2021

Residential Tenancy Branch