



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Plan A real estate services LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OLC, FFT**

Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was represented by an advocate. The corporate landlord was represented by its agent (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The landlord testified that they received the tenant's materials and have not served the tenant with their materials. The landlord consented to their documentary materials being excluded. Based on their testimonies I find the landlord duly served in accordance with sections 88 and 89 of the *Act* and exclude the landlord's documentary materials.

Preliminary Issue – Jurisdiction

The landlord submits that the Residential Tenancy Branch (“RTB”) does not have jurisdiction to hear this matter, as the living accommodation in question is occupied by the tenant as vacation or travel accommodation pursuant to section 4(e) of the Act.

The parties agree on the following facts regarding their agreement. The tenant began occupying the unit on February 1, 2021. The suite is a unit in a multi-unit strata managed building. The tenant pays monthly rent in the amount of \$2,200.00 on the first of each month. A security deposit of \$1,100.00 and pet damage deposit of \$1,100.00 were paid at the start of the agreement and are still held by the landlord. The tenant also paid a move-in fee of \$200.00 which the landlord states is required by the strata corporation.

The tenant submitted into documentary evidence a document titled Furnished Travel Accommodation Tenancy Agreement signed by the parties. The document contains the following terms:

- 1) The tenant agrees that the rental unit will only be occupied for the sole purpose of being utilized as vacation or travel accommodations. Use for any other purpose is explicitly prohibited. Accordingly, both the landlord and the tenant acknowledge that the Residential Tenancy Act of British Columbia does not apply to the terms of this agreement or any addendums, changes or additions to these terms.
- 2) Since the rental unit will only be utilized for vacation or travel accommodations, the landlord and tenant agree that the [RTB] is the inappropriate organization to settle any disputes arising from this agreement.

The parties initialed beside these two terms.

The agreement further provides that the length of the tenancy is from February 1, 2021 to July 31, 2021 and states:

By 1pm on the date this tenancy ends, the tenant must move out of the residential unit unless both the landlord and tenant enter into a new tenancy agreement or lease renewal which must be executed in writing.

The parties initialed this term of the written agreement.

The landlord submits that the agreement contains unambiguous language and was signed and initialled by the parties indicating their agreement to the terms contained. The landlord testified that their intention from the outset was to provide short-term vacation or travel accommodation and not to create a tenancy.

The tenant submits that the agreement for Furnished Travel Accommodation is substantially the same as the standard agreement provided by the Branch for tenancies, even using the same formatting and font. When applying to reside in the unit the tenant completed an application form including information on the reason they are leaving their previous place of residence. The parties testified that the monthly rent does not include electricity and the tenant is responsible for registering their own account with BC Hydro.

Residential Tenancy Policy Guideline 27 provides guidance on factors to consider when determining whether the Act applies to a living arrangement. It states in part:

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.

Reviewing these factors and the evidence before me it is clear that the current living arrangement has the essential essence of a tenancy that falls under the jurisdiction of the Act. The tenant has exclusive possession of the rental unit. The term of the rental is a fixed term of six months with the option of renewal. The rental unit is the primary, permanent and sole place of residence of the tenant who indicated in their initial application that they were moving and were charged a move-in fee by the landlord.

I further note that the language of the *Act* provides that it does not apply to living accommodations *occupied* as vacation or travel accommodations. Regardless of the title of the signed agreement the tenant is occupying and using the rental unit in a manner consistent with a tenancy to which the *Act* applies.

I find that the evidence before me overwhelmingly shows that the rental unit is being occupied by the tenant in a manner consistent with a residential tenancy to which the *Act* applies. Accordingly, I find that this living arrangement falls under the jurisdiction of the *Act* and this Branch.

Issue(s) to be Decided

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

The tenancy agreement provided by the landlord is for a fixed term from February 1, 2021 to July 31, 2021 and requires the tenant to either move out at the end of the term or enter into a new tenancy agreement.

The tenant submits that the agreement contravenes sections 55(2)(c) and 97(2)(a.1) of the *Act* and Regulation 13.1 by requiring the tenant to vacate the rental unit in circumstances other than those allowed for in the legislation.

The tenant further notes that the agreement, by allowing the landlord to renegotiate a new tenancy agreement at the end of the fixed term, circumvent the portions of the *Act* and regulations limiting the timing and amount of rent increases.

The tenant submitted into documentary evidence multiple past decisions from this Branch regarding the landlord and their conduct in relation to other tenancies. In the earlier decisions the landlord has been found by arbitrators to be attempting to contract out of the *Act* by mischaracterizing tenancy agreements as travel and vacation accommodations. The tenant submits that the present matter is yet another instance in the pattern of repeated attempts by the landlord to avoid the *Act* and unscrupulously exploit vulnerable tenants.

The parties gave evidence that since the date of the fixed term agreement the tenant has continued to reside in the rental unit and make monthly payments in the amount of \$2,200.00 which has been accepted by the landlord.

The tenant seeks relief in a determination that the living arrangement has become a periodic month-to-month tenancy at the end of the fixed term and that the tenancy is fully subject to the *Act* and regulations including the limits set on the timing and amount of rent increases.

The landlord submits that the signed agreement is a valid and binding agreement which provides that the tenant must vacate the rental unit at the end of the fixed term. The landlord characterizes the tenant as misrepresenting and deceiving the landlord into entering the agreement. The landlord failed to explain how the tenant misrepresented or induced the landlord into the agreement when the written agreement was prepared by the landlord. The landlord made some reference to monetary losses from being unable to rent out the suite to other occupants and submits that they could be charging a higher monthly rent based on comparative studies of neighboring properties.

Analysis

Section 5 of the Act provides that:

- 5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

As noted above I have found that the present living arrangement is a tenancy under the definition of the *Act* and falls under the jurisdiction of this Branch. I find that the mere act of including the words “travel accommodations” in the title of a document does not affect the manner in which the rental unit is used and occupied.

I accept that the characterization of this tenancy as “vacation or travel accommodation” by the landlord is an attempt to avoid the *Act* and allow the landlord to enforce clauses that directly contravene the *Act* and regulations. Specifically, the requirement that the tenant either vacate the rental unit at the end of the fixed-term or to enter a new tenancy agreement.

Sections 55(2)(c) and 97(2)(a.1) of the *Act* and Regulation 13.1 prescribe the circumstances in which a tenancy agreement may include a requirement for a tenant to vacate at the end of a fixed term. The requirement is limited to circumstances where the landlord is an individual and the landlord or close family member intends in good faith to occupy the rental unit.

It is evident that the circumstance does not apply to the present matter where the landlord is a corporate entity and their stated desire to enforce the vacate clause is to rent the suite to other occupants at a higher monthly rate.

Pursuant to section 5(2) of the *Act* I find that the requirement for the tenant to vacate the rental unit is of no force or effect. I find that pursuant to section 44(3) of the *Act* as the tenant was not required to vacate the rental unit at the end of the fixed term and the parties have not entered a new tenancy agreement the parties are deemed to have renewed this tenancy as a month-to-month tenancy on the same terms. Those terms delineated in the signed tenancy agreement which provides monthly rent of \$2,200.00 payable on the first of each month which includes water, internet, furniture and laundry access among other amenities.

I note parenthetically that the evidence of the parties is that this is not a single occurrence of the landlord attempting to contract out of the *Act* but part of a repeated pattern of business practice which, based on the earlier decisions submitted, has been ongoing since at least 2017 and found by the Branch to be contraventions of the spirit and intent of the legislation.

I find the conduct of the landlord to be highhanded in addition to being wilful violations of the *Act* designed to gain financial advantage over tenants. While the tenant is not seeking a monetary award for damages I find that continued violations on the part of the landlord may be found to be unreasonable infringement on the tenant's right to quiet enjoyment giving rise to a monetary award in the future.

I further note that the repeated, wilful failure of the landlord to comply with the *Act* and regulations is conduct worthy of censure and rebuke and forms the basis of a referral to the Compliance and Enforcement unit of the Branch.

As the tenant was successful in their application, they are entitled to recover their filing fee from the landlord. As this tenancy is continuing, I allow the tenant to satisfy this

monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The tenant's application is successful. The living arrangement is a periodic tenancy as defined by the Act with monthly rent in the amount of \$2,200.00. The landlord is ordered to comply with the Act, regulations or tenancy agreement. Any clause contained in the written agreement that does not comply with the Act and regulations are of no force or effect.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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: October 27, 2021

Residential Tenancy Branch