



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The tenant stated that the landlord was served with the notice of hearing package Mail. The landlord confirmed that she received the tenant's notice of hearing package. Both parties confirmed the tenant served the landlord with the submitted documentary evidence via Canada Post Registered Mail on February 26, 2021. Both parties confirmed the landlord served the tenant with the submitted documentary evidence in person on May 20, 2021. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties are deemed served as per section 90 of the Act.

The hearing was adjourned due to a lack of time after 79 minutes due to extensive arguments by both parties on jurisdiction.

On October 19, 2021 the hearing was reconvened with both parties.

Preliminary Issue(s)

At the outset, the landlord argued that the Residential Tenancy Branch (RTB) does not have jurisdiction to hear this matter as the rental property falls under Vacation or Travel Accommodations as a “vacation rental property”. The landlord argued that the tenant booked the rental via VRBO an online platform for renting. The landlord stated that this was for a longer term for a specified time period and that it was for a furnished rental. The landlord referenced a VRBO calendar which shows the tenant’s booking. The landlord stated that the property from which the rental space is are all used as vacation rental units.

The tenant argued that she signed a RTB Tenancy Agreement with the landlord on May 4, 2020, but never received a copy. The tenant stated that she did not book anything through the VRBO platform and that no payments were made to it by the tenant.

Section 4 (e) of the Act states in part,

This Act does not apply to living accommodation occupied as vacation or travel accommodation.

Residential Tenancy Branch Policy Guideline #27, Jurisdiction states in part,

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 the occupancy.

Residential Tenancy Branch Policy Guideline #9, Tenancy Agreements and Licenses to Occupy states in part,

Tenancy agreement is defined in the Residential Tenancy Act (RTA) as an agreement whether written or oral, express or implied, between a landlord and a tenant respecting

possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit...

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

The tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and
The tenant pays a fixed amount for rent.

Under a license to occupy, a person is given permission to use a rental unit or site, but that permission may be revoked at any time....

Some factors that may help distinguish a tenancy agreement from a license to occupy are discussed below. No single factor is determinative.

The home is a permanent primary residence. In *Steeves v. Oak Bay Marina Ltd.*, 2008 BCSC 1371, the BC Supreme Court found:

The MHPTA is intended to provide regulation to tenants who occupy the park with the intention of using the site as a place for a primary residence and not for short-term vacation or recreational use where the nature of the stay is transitory and has no features of permanence.

In this case, I rely solely on the submissions of both parties and find on a balance of probabilities that the Residential Tenancy Branch does not have jurisdiction. Despite the tenant's claims that a signed tenancy agreement was made, no supporting evidence was submitted. I find that the landlord has provided sufficient evidence to satisfy me that this is a vacation rental and that the Residential Tenancy Act does not apply in this case. All of the submissions made by the landlord support the claim that this is a vacation rental. As such, the tenant's application is dismissed 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: November 3, 2021