



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-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.

Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on April 24, 2021. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail on September 24, 2021. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 71 of the Act.

At the outset, the tenant's application was reviewed. The tenant's original application was filed via the Direct Request Process that was adjourned to a participatory hearing as it was determined by an Adjudicator that the tenants evidence submission of an agreement indicates that the rental is for travel, vacation or transitional purposes.

The landlord claims that the rental is a permanent vacation rental only and as such the Residential Tenancy Branch does not have jurisdiction.

Section 4 of the Act establishes that living accommodation occupied for vacation or travel or provided as transitional housing is not governed by the Act.

The tenant provided arguments that this was a regular rental and not a vacation home despite the signed agreement indicating it as such. The tenant stated that the tenancy was for a fixed term from September 2020 to June 2021 and that they had occupied the premises as their primary residence.

The landlord disputes this arguing that this is only a vacation home which has been operating as such for the last 14 years. The landlord has referenced submitted copies of previous rental contracts since 2009 for short term stays and a copy of a guest book confirming it as such. The landlord argued that this rental was advertised as a vacation home, the signed agreement stipulates it as a vacation home and the tenants acknowledged it as such in their communications.

Both parties confirmed that the tenants had moved into the rental unit based upon the agreement to begin on September 1, 2020 and ending on June 30, 2021. Both parties confirmed that the tenancy ended on February 28, 2021 after the tenants gave notice. Both parties confirmed the tenants reasons were that they had purchased a home.

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

Section 84.1 of the RTA and 77.1 of the MHPTA give the director (“director” and “arbitrator” are used interchangeably in this guideline) exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in a dispute resolution proceeding or in a review brought under those Acts, and to make any order permitted to be made...

Section 58(3) of the RTA and 51(3) of the MHPTA provide that a court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted to the director for dispute resolution, except if:

- the claim is for an amount that is more than the monetary limit for claims under the [Small Claims Act](#)*
- the dispute is linked substantially to a matter before the Supreme Court*

Vacation or Travel Accommodation and Hotel Rooms

The RTA does not apply to vacation or travel accommodation or vacation for 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.*

Even if a hotel room is operated pursuant to the Hotel Keeper's Act, the occupant is charged the hotel room tax, or the occupancy is charged a daily rate, a tenancy agreement may exist. A tenancy agreement may be written or it may be oral.

A person occupying a room in a residential hotel may make an application for dispute resolution, without notice to any other party, requesting an interim order that the RTA applies to that living accommodation

In this case both parties confirmed that the signed tenancy agreement indicates that it is a "Vacation, Travel, Transitional Accommodations rental agreement..." The terms states "This agreement shall commence on Tuesday, September 1, 20220 and terminate on Wednesday, June 30, 2021. The living accommodations occupied by the guests has primary use as vacation or travel accommodation or transitional housing.

- The guests by signing this agreement understand and agree to these above terms.
- The guests by signing this agreement understand and agree that this is a fully furnished house with all furniture, linens, dishes, bedding supplied to be maintained, cleaned and not removed from the vacation rental unless authorized in writing by the owner.

Deposit: Damage/Cleaning deposit of \$1,125.00 will be required with signed contract to hold the rental property for the dates requested. The owner will acknowledge receipt of the deposit by signing this contract...

In this case, I rely solely on the submissions of both parties. Despite the tenants claims that the rental unit was their primary residence, both parties confirmed that the rental was advertised as a vacation rental; an agreement was made by both parties acknowledging that it was a vacation rental; and the landlord submitted historical

evidence that the rental has been rented primarily as a vacation rental for the last 14 years. I find that the landlord has provided sufficient evidence to satisfy me that this is a vacation rental and as such the Residential Tenancy Branch does not have jurisdiction. On this basis, 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

Residential Tenancy Branch