



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vida Suites, Cosy Suites Ltd
Vancouver.Rentals
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of the Applicant's Application for Dispute Resolution by direct request, made on July 7, 2022 (the "Application") and adjourned to a participatory hearing. The Applicant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order for the return all or part of the security; and
- an order granting recovery of the filing fee.

The Applicant and the Respondent's Agent E.G. attended the hearing at the appointed date and time. At the start of the hearing, the Respondent's Agent questioned if the *Act* applied to this living situation. The parties confirmed the following:

The Applicant owns his own unit at the rental property. The Applicant's unit was undergoing renovations, therefore, he stayed in a short-term rental unit within the same residential property. Initially, the Applicant secured the unit through a short term vacation rental platform for one month. As the renovations were taking longer than anticipated, the Applicant and the Respondent agreed to extend the short-term rental for another month. At this point, the parties established a written agreement between them for the extra month, rather than incurring fees by booking through the vacation rental platform.

The parties agreed that they formed a new agreement for one month, during which the Applicant would pay the respondent \$2,650.00 for the 30 day stay, as well as a security deposit in the amount of \$1,300.00. The Applicant stated that he mostly had exclusive use of the unit, except for on several occasions where the Landlord would attend the unit to make repairs.

Preliminary Matters - Jurisdiction

Section 4(e) of the Act states that the Act does not apply to living accommodation occupied as vacation or travel accommodation.

Policy Guideline 27, which refers to the *Act* as the RTA, provides the following:

“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.

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.”

Based on Policy Guideline 27, and from the testimony provided, I am satisfied that this rental unit is primarily used as a short-term vacation rental accommodation, given that the Applicant found the unit advertised on a short-term vacation rental platform. I further find that the unit was not the Applicant's primary and permanent residence, as the Applicant indicated that he owns his own unit in the same building, which was undergoing renovations at the time. Given the short duration of the Applicant's stay, and the fact that the Landlord was permitted to attend the rental unit on several occasions for repairs, I find that this living situation is more of short-term vacation or travel accommodation rather than a residential tenancy.

Accordingly, pursuant to section 4(e) of the *Act*, I find the *Act* does not apply to the agreement between the parties. The Application is dismissed for lack of jurisdiction.

Conclusion

I decline to proceed due to a lack of jurisdiction, and the Application is dismissed without leave to reapply. The Applicant should seek legal advice from their lawyer as to how to resolve this dispute.

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: April 20, 2022

Residential Tenancy Branch