



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RPP, FFT**

Introduction

This hearing dealt with an application pursuant to section 65 and 72 of the *Residential Tenancy Act* (the “Act”) for a return of personal property and recovery of the filing fees.

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 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 parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue-Jurisdiction

At the outset of the hearing the respondent raises the issue of jurisdiction and submits that this is a long-term vacation rental and not a tenancy.

The parties agree that the occupancy began on September 7, 2021 with the applicants charged a daily rate of \$65.00 initially. The applicants paid a deposit of \$975.00 which is still held by the respondent. The applicants subsequently moved to another suite and they were thereafter charged a daily rate of \$70.00. Payment was made monthly on the first of each month.

The respondent submits that the accommodation was advertised as extended-stay vacation accommodation available during off-season from September to June. The respondent submitted into evidence the agreement between the parties and a portion of the ledger showing that the daily rates and applicable taxes.

The applicant submits that this was their sole residence, they brought their personal items including cutlery, dishes and electronic appliances and were not provided hotel services. They disagree that they were ever charged taxes at any time during their stay.

Section 4(c) of the *Act* sets out living accommodations to which the *Act* does not apply. It reads in part as follows:

- 4 *This Act does not apply to...*
 (e) *living accommodation occupied as vacation or travel accommodation,...*

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 tenants had exclusive possession of the rental unit. The term of the rental is a fixed term from September 7, 2021 to June 15, 2022. The rental unit was the primary, permanent and sole place of residence of the tenants. Housekeeping services was not provided to the tenants who had exclusive use of the rental unit. The landlord's

documentary evidence of charges shows that taxes were only charged after January 15, 2022, when the parties submit that the tenancy had already ended.

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 or the zoning of the area, the tenants were 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 was 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.

Issues

Are the tenants entitled to recover their personal property from the landlord?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

While the parties disagree on the manner in which this occupancy ended, the parties agree that the landlord is presently holding the personal property left in and about the rental unit at the end of the tenancy.

The landlord made some submissions about rental arrears, the damaged state of the rental unit and submits the property was abandoned.

The tenants submit that they were barred from accessing the rental unit and retrieving their possessions and pets and seeks an order for their return.

Analysis

Section 26(3) of the *Act* provides that whether or not a tenancy pays rent in accordance with the tenancy agreement, a landlord must not seize any personal property of the tenant or interfere with the tenant's access to the personal property.

In the present case, I accept the undisputed evidence of the parties that the landlord has seized the personal property and has prevented the tenant from accessing them in contravention of the Act.

I find insufficient evidence in support of the landlord's characterization that the tenant abandoned the property.

Therefore, I find it appropriate to order pursuant to section 65, that the landlord return all personal property seized and held by them in contravention of the *Act*.

As the tenants were successful they are also entitled to a monetary award for recovery of the filing fee.

Conclusion

The landlord is ordered to return the tenants' personal property seized in contravention of the *Act*, to the tenants immediately.

I issue a monetary order in the tenants' favour in the amount of \$100.00. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 5, 2022

Residential Tenancy Branch