



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding PLAN A REAL ESTATE SERVICES LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$3,000.00 for damage or compensation under the Act; and to recover her \$100.00 Application filing fee.

The Tenant and two agents for the Landlord, A.M. and K.H. ("Agents") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with her Notice of Hearing documents and evidence by Canada Post registered mail, sent on June 17, 2022. The Tenant provided a Canada Post tracking number as evidence of service. The Agents acknowledged that they had received the Tenant's registered mail package and had had an opportunity to review it.

The Agents said that they sent their evidence to the Tenant at the address she had provided for service in the Application documents; however, the Tenant said she did not receive the Landlord's documents, as she has since moved back to Australia. She said the Agents did not email her their evidence. The Agents said that they are satisfied with my relying solely on the Tenant's evidence, as their evidence duplicates much of what

the Tenant submitted. As such, with the consent of the Parties, I will consider only the Tenant's evidence before me.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

### JURISDICTION

The matter of whether I have jurisdiction to consider this application arose briefly, as the Tenant refers to the rental unit as a "vacation" rental. She said she did not know how long she would stay there. The Tenant indicated that she was looking for something less expensive than this rental unit. In the hearing, the Tenant said:

My claim is about when I resided there, it was meant to be a vacation rental. So, I went there and was not staying for the given time, because it was only a vacation rental. I was looking for another rental that was cheaper. When I contacted the Landlord and told him I was leaving, he said I had to pay the \$3,000.00 of rent for when I was not going to be in the apartment. The rent paid is.... In Australia, a person is not liable to pay rent in – just fees for advertising, while [the landlord] looks for another tenant.

The Agent, A.M., said that he did not have a preference as to whether I found the unit to be a rental unit or a vacation unit. He acknowledged, and the Tenant mentioned that the RTB has investigated his organization, due to complaints such as this. I note that the investigation was completed and findings made after the Tenant applied for this accommodation.

Policy Guideline #27, "Jurisdiction" ("PG #27"), states:

#### **b. 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 the accommodation is rented under a

tenancy agreement, the RTA applies. For instance, the RTA would likely apply to a winter chalet rented for a fixed term of 6 months.

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 Keepers Act*, the occupant is charged the hotel room tax, or the occupant is charged a daily rate, a tenancy agreement under the RTA may exist. A tenancy agreement may be written or oral.

Based on PG #27, and from the evidence, I am satisfied that the Tenant:

- had exclusive possession of the rental unit (subject to a landlord's usual access rights);
- had paid a security deposit of half a month's rent;
- in the absence of any other documentation or evidence provided by the landlord, this Tenant did not have any other permanent or primary residence identified in Canada.

Taken together, I find that these requirements are more consistent than not with the Parties having established a residential tenancy, rather than a vacation rental. In looking at the terms or clauses of this agreement, I find that the rental was a tenancy pursuant to the Act, and therefore, that I have jurisdiction to consider this matter.

#### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

#### Background and Evidence

The Parties agreed that the fixed-term tenancy began on May 1, 2022, and was to run

to June 30, 2022. They agreed that the tenancy agreement required the Tenant to pay the Landlord a monthly rent of \$2,900.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,450.00, and no pet damage deposit. They also agreed that the Landlord returned the security deposit to the Tenant in full at the end of the tenancy. The Parties agreed that the Tenant vacated the rental unit on June 1, 2022, but did not give the Landlord her forwarding address in writing.

In the hearing, the Tenant explained her claim, as follows:

My claim is about when I resided there, it was meant to be a vacation rental. So, I went there and not staying for the given time, because it was only a vacation rental. I was looking for another rental that was cheaper. When I contacted the Landlord and told him I was leaving, he said I had to pay the \$3,000.00 of rent for when I was not going to be in the apartment. The rent paid is.... In Australia, a person is not liable to pay rent in – just fees for advertising, while [the landlord] looks for another tenant.

That wasn't discussed. He immediately said you have to pay the month you're not going to be here. No discussion. It did not go well on both sides. I pushed this claim forward, because he threatened me. I felt the money was stolen from me. instead of a professional conversation. I ended the call. I wasn't - I didn't say certain things, but he didn't listen. He sent me text messages threatening to report me to immigration, and to take action against my job. He was extremely unprofessional, and it should never have occurred that he threatened my livelihood.

Second point, I also recognized that this contract was done on – certain things when I did more research, in the contract, there is a section saying this is not held under the [RTB], because it's a rental unit, but BC law says rental units, because he essentially promoted it as a vacation rental. He was not meant to take a down payment, get a BC Hydro account, or tenants' insurance, and that's what he asked me to do - which you do in a normal rental. It seemed disingenuous. So this is why I've raised this claim - to show his very disingenuous practice.

In the hearing, the Tenant indicated that on May 25, 2022, she advised the Agents that she would be moving out on June 1, 2022, rather than June 30, 2022. They agreed that the Agent sent the Tenant a document to sign setting out her intentions in this regard.

The Agent said that they were unsuccessful in finding someone to rent the suite for June 2022; however, they said the unit owner agreed to refund the Tenant \$500.00 of her June rent.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

(“Test”)

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

Policy Guideline #3 states that an award of damages is intended to put the affected party in the same position, as if the other party had not breached the Act, regulation, or tenancy agreement. In the case of breaching a fixed term tenancy agreement, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

As I have found this matter to fall under the jurisdiction of the Act, the Tenant would have to present an argument citing the sections of the legislation or tenancy agreement that the Landlord had breached. While I agree that the Landlord was likely disingenuous as to the type of rental you were entering, the RTB is not the correct forum in which to make a claim against this Landlord. The evidence before me is that it was the Tenant who breached the fixed term tenancy agreement by ending the tenancy a month early.

Section 45 (2) of the Act states that a tenant may end a fixed term tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, I find that the Tenant ended a two-month, fixed term tenancy one month early, contrary to section 45 (2) of the Act and the tenancy agreement. I find that this breach would deprive the Landlord of \$2,900.00 in rental income for June 2022, had the Tenant not already paid it.

However, the Agents also had a duty to minimize that loss by re-renting the unit as soon as possible. I find that the Agent started to advertise for new tenants once the Tenant advised him of her impending departure; however, I find that this gave the Agents only a few days to find a new tenant for June 2022. They were unsuccessful.

I find that the Agents did what was reasonable in the circumstances, despite not having time to find a new tenant for June 1, 2022. As a result, I find that the Landlord was owed the rent money for June 2022, which the Tenant had already paid, and therefore, I dismiss the Tenant's Application to refund this rent payment without leave to reapply, pursuant to section 62 of the Act.

### Conclusion

The Tenant is unsuccessful in her Application, as she failed to provide sufficient evidence that the Landlord breached the legislation or tenancy agreement for this fixed term tenancy. The Tenant's Application is dismissed wholly without leave to reapply.

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: February 16, 2023

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Residential Tenancy Branch