



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC MNDCT OLC DR LRE

Introduction and Analysis

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 1 Month Notice to End Tenancy for Cause (1 Month Notice), for a monetary order in the amount of \$3,300 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to dispute a rent increase, for an order directing the landlord to comply with the Act, Regulation or tenancy agreement, and for an order to set limits on the landlord's right to enter the rental unit, site or property.

The tenants and the owner of the corporate landlord company (landlord) attended the teleconference hearing. A witness for the tenants also attended the hearing but was not called to testify.

Although the landlord claimed they were not served in accordance with the Act, the parties were both at the hearing and the issue of jurisdiction was raised.

Preliminary and Procedural Matters

I will first determine whether the Act applies to this matter and then will address service issues further below.

The landlord claims that the Act does not apply due to an "Employee Agreement" which also contains a "Staff Housing" section, which sets out the following in part, which I have redacted all personal information to protect privacy:

STAFF HOUSING

1. This property, located at [REDACTED] Ski Resort Staff Housing, is leased by ProStyle Cleaning & Management Services Ltd (ProStyle Cleaning). Occupancy of this housing is a condition of employment for ProStyle Cleaning at a minimum of 40 hours per week when 40 hours of work per week is available. Permission to live in this housing must be granted by ProStyle Cleaning.

2. The minimum term is from August 21, 2022 to October 31, 2022. The first month's rent of \$700.00 is due by August 30, 2022.

3. The deposit of \$350.00 is non-refundable, is due upon signing of this agreement and will be used to secure your bed in the staff housing unit as well as retained as a damage deposit at which time it will become refundable upon move out.

4. After the first month an amount of \$700.00 per month will be deducted from your pay once per month to cover the rent owed.

5. Inspections: ProStyle Cleaning reserves the right to inspect our housing whenever it is deemed necessary.

6. Safety inspections: Every six (6) months you will be notified that an inspection of the Safety devices will be conducted. Smoke alarms, carbon monoxide detectors and fire extinguishers will be checked.

7. Permission to enter unit: Employee agrees to let ProStyle Cleaning personnel or contractors enter the dwelling upon reasonable advance notice in order to inspect the premises, to exterminate pests, to make repairs, or to show the premises to prospective employees.

8. Utilities: ProStyle Cleaning will provide heat, electricity, water, cable and internet.

9. Housing is a condition of employment: If you are no longer an employee of ProStyle Cleaning, you will be expected to move out within seven (7) days to allow a new employee to move in.

10. Cleanliness & Maintenance: It is your responsibility to keep the housing unit clean and properly maintained. This includes:

- Picking up after yourself
- Not pouring grease into the drains (pour into glass or metal container and then throw the garbage when cool)
- Keeping food in containers or the refrigerator
- Cleaning dishes and counters after every meal



Term 2 indicates that monthly rent would be \$700 and the term would be a minimum of August 21, 2022 to October 31, 2022. Term 3 reflect a deposit of \$350. Term 4 states that \$700 will be deducted from their pay once per month.

The landlord confirmed that they are renting the entire home and do not reside there and instead charge rent to employees on a monthly basis. The landlord confirmed that their monthly rent is \$1,400, which increases during the winter months.

The landlord testified that they were relying on Term 9 to force the tenant out of the rental unit which says that housing is a condition of employment and that they are expected to move out within 7 days to allow a new employee to move in.

The parties were advised that section 5 of the Act applies and states:

This Act cannot be avoided

5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In addition, section 1 of the Act applies and defines landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Given the above, I find that the landlord meets the definition of landlord under the Act and that the landlord has attempted to contract outside of the Act by subletting rooms in the home that the landlord is tenanted, under separate tenancy agreements.

Therefore, I find Act applies to this matter.

The tenant claims the landlord forcibly removed them from the rental unit, which the landlord vehemently denied and stated that the tenant vacated on their own accord on October 31, 2022. I make no finding as to who is telling the truth as there is no 1 Month

Notice before me in this matter. The tenant submitted a text, which has no force or effect under the Act.

In addition, the landlord testified that the room occupied by the tenant is now occupied by a new “cleaner” and as such, I find the tenant in this matter no longer has right to the rental unit.

The tenant may apply for compensation under the Act if they feel that they are owed compensation under the Act.

Conclusion

The tenant’s application is dismissed with leave to reapply due to a service issue.

The Act does apply to this living arrangement.

This decision does not extend any applicable time limits under the Act.

As the filing fee was waived, it is not granted.

This decision will be emailed to both parties at the email addresses confirmed by both parties during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 3, 2023

Residential Tenancy Branch