



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking monetary compensation from the landlord. The record indicates that the tenant's application seeks compensation for the landlord's failure to comply with the *Residential Tenancy Act* and use the rental unit for the purpose contained in a notice to end the tenancy. However, during the course of the hearing, I found that the tenant's application seeks monetary compensation for the landlord's failure to comply with the *Act* regarding eviction without notice.

The tenant and the landlord attended the hearing, and the landlord was accompanied by a support person and Legal Counsel. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

During the course of the hearing, Legal Counsel for the landlord raised a legal issue with respect to jurisdiction.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed, and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- Does the *Residential Tenancy Act* apply to this tenancy?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this tenancy began on June 1, 2023 on a month-to-month basis, which ended on June 5, 2023. Rent in the amount of \$1,000.00 was payable on

the 1st day of each month, and was paid for the month of June, 2023. The landlord collected a security deposit from the tenant in the amount of \$1,000.00 which has been returned to the tenant. The rental unit is a studio apartment in a duplex, and the landlord resided in the other half of the building.

A copy of a tenancy agreement has been provided for this hearing, which does not indicate the amount of rent payable or the date that rent is due. It is entitled "Short-term Tenancy Agreement" with an address of the rental unit and states that vacating before the agreed 3 months requires 2 months' notice, and breach of the contract will result in eviction without notice. The tenant testified that the 2 boxes, marked, "I/we don't smoke," and "I/we don't have a pet(s)," were not checked off because the tenant smokes, and has a pet but the pet was not intended to stay in the rental unit.

The tenant went to the community for medical reasons. When the tenant arrived to the rental unit after work on June 5, 2023 the tenant was asked to sign the tenancy agreement. The parties had a verbal agreement that the landlord would have access to the rental unit for the landlord's art studio, and arrived to take measurements for blinds. The landlord found that the place smelled like smoke, but the tenant had not smoked in the rental unit, and replied that perhaps it was from the tenant's clothing. However, the landlord said that the tenant had to leave, so he did. The accommodation that the tenant had been at was still available, and the tenant went there.

The tenant claims \$500.00 as compensation for being evicted without notice.

The landlord testified that initially, the landlord had rented the suite on a long-term basis but couldn't find a tenant so decided to turn it to short-term. The landlord knew the tenant from a friend, and the tenant needed a place, so the parties came to an agreement for 1 month, and would see what happened. The tenant agreed to no smoking, no pets, \$1,000.00 for rent and a \$1,000.00 security deposit. The landlord had previously used a tenancy agreement from the Residential Tenancy Branch website.

When the landlord entered the rental unit to measure for blinds, the landlord was overwhelmed by the stench of smoke, and found 2 cigarettes under a plant outside. The landlord told the tenant to move out when it was convenient for the tenant to do so, not immediately. The tenant got very angry, felt unjustly treated and wanted \$500.00 back. However, the tenant had breached the agreement and the landlord returned the security deposit.

SUBMISSIONS OF THE TENANT:

The tenant didn't know what to do, and went to a Community Resource Centre and was advised that the landlord was totally wrong.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The tenant testified that he was in the community for medical reasons. Under Section 4(e) of the *Residential Tenancy Act*, the *Act* does not apply to vacation or travel accommodation. The tenant left once he was prepared to do so, by mutual agreement, or perhaps a stretch, abandoned the rental unit.

Analysis

The *Residential Tenancy Act* specifies what the *Act* does not apply to, which includes living accommodation occupied as vacation or travel accommodation.

The tenancy agreement specifies a short-term tenancy, and does not contain the standard terms, such as how much rent is or when it is due.

Given that the tenant was in the community for medical reasons, not to live full-time, I find that the accommodation was occupied as travel accommodation. My authority is under the *Residential Tenancy Act*. Since the *Act* specifies that vacation or travel accommodation does not apply to the *Act*, I decline jurisdiction.

Conclusion

For the reasons set out above, I hereby decline jurisdiction with respect to this tenancy.

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: December 29, 2023

Residential Tenancy Branch