

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

- by -

Lily Lin and Greg Chen
(" Lin and Chen ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Carol L. Roberts

FILE No: 1999/767

DATE OF HEARING: February 21, 2000

DATE OF DECISION: February 29, 2000

DECISION

APPEARANCES:

For Lily Lin and Greg Chen	On their own behalf
For the Director of Employment Standards	G. Omstead
For Shuling Pan	On her own behalf

OVERVIEW

This is an appeal by Lily Lin and Greg Chen ("Lin" and "Chen"), pursuant to Section 112 of the *Employment Standards Act* ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued November 29, 1999. The Director found that Lin and Chen contravened Sections 17, 34, 45, 46 and 58 of the *Act*, and Ordered that they pay \$2,372.21 to the Director on behalf of Shuling Pan ("Pan") for wages, vacation pay and statutory holiday pay.

ISSUE TO BE DECIDED

At issue on appeal is whether the Director erred in determining that Pan was an employee. If I find that the Director was correct in that determination, Lin and Chen do not dispute the amount owing.

FACTS

Pan came to Canada in May 1998, and lived with Lin and Chen, who are her sister-in-law and brother-in-law, for approximately one month at their property, which they operate as a Bed and Breakfast. (Lily House)

On or about June 19, 1998, Pan moved to an apartment owned by Lin and Chen, and from July 1, 1998, performed cleaning duties at Lily House until she was involved in a vehicle accident on September 13, 1998.

Lin advised the Director's delegate that Pan worked at Lily House in exchange for rent at the apartment, and that the rent was offset by the work she performed at the Bed and Breakfast.

Pan told the Director's delegate that Lin told her she would get paid \$6.00 per hour. She told the delegate that she worked 5 hours per day, 7 days a week from July 1 to July 11, and 9 to 10 hours per day from July 12 to July 22 and 5 hours per day from July 23 to September 23. Pan did not dispute that she did not pay rent for living accommodations.

The Director's delegate determined that Pan was an employee.

ARGUMENT

Lin and Chen argue that the Director's delegate made errors of fact in his determination. They contend that no compensation is owed, as any wages are owed, they are offset by rental payments due to them by Pan. They argue that Pan has already received a benefit, and that it is unfair for her to receive compensation in addition to that.

Lin and Chen state that Pan is a family member, and according to their culture, business within the family is based on oral, rather than written agreements. They say that they assisted her with her move to Canada, hired an immigration lawyer, assisted her in finding both accomodation and a job.

There is no dispute that when Pan moved to Victoria, she lived with Lin and Chen for one month. When she was unable to secure an apartment within her budget, they let her move into an apartment they own. Their evidence is that Pan agreed to work for them at Lily House in exchange for the rent. They say that their agreement was never put into writing, but that Pan clearly understood she would not get paid for her work because she lived in their rental property without paying rent. Lin contends that Pan never sought wages from her at any time while she worked for her, or after she moved out of the apartment.

They argue that the delegate's finding that there was no written authorization to deduct rent from wages earned, is unfair because Chen and Pan's husband are brothers, and that the verbal agreement between them ought to be sufficient, based on their cultural background.

Lin and Chen say they have been offended and deeply hurt by Pan's claim against them, which was made long after she moved out.

DECISION

There is no dispute that Pan did perform cleaning duties for Lin and Chen.

Pursuant to Section 17 of the *Act*, an employer must pay all wages earned by an employee in a pay period.

Section 1 of the *Act* defines employer as including a person who has or had control or direction of an employee, or who is or was responsible, directly or indirectly, for the employment of an employee.

Employee is defined as a person an employer allows, directly or indirectly , to perform work normally performed by an employee.

Pan performed cleaning services for Lin and Chen, work normally performed by an employee. Consequently, I find that the Director's delegate did not err in concluding that Pan was an employee for the purposes of the *Act*.

Although I appreciate the cultural background of the parties does not require written agreements where family members are involved, I am bound to apply the *Act*. Section 4 does not allow parties to make any agreement or contract that violates the *Act*, including the payment of wages.

I also appreciate that there may be a conflict between this *Act* and the *Residential Tenancy Act*. Section 1 of that *Act* provides that rent includes consideration, whether in money, services or goods, given by a tenant to a landlord in respect of residential premises.

Nevertheless, as an adjudicator under the *Employment Standards Act*, I am obligated to make a determination on the appeal before me. That involves a claim for wages owing, not a claim for rental arrears. It may be that the Appellant has a claim under the *Residential Tenancy Act* in that respect.

ORDER

I Order, pursuant to Section 115 of the *Act*, that the Determination, dated November 29, 1999 be confirmed, together with any interest accruing since the date of the Determination.

Carol L. Roberts
Adjudicator
Employment Standards Tribunal