



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, MNDC, ERP, RP, PSF, RR, FF, OPR, MNR, MNSD

### Introduction

This hearing dealt with applications from the landlord and the tenants submitted pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The three tenants listed above applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

### Preliminary Matters

The landlord's representative (the landlord) confirmed that the landlord received a copy of the tenants' dispute resolution hearing package handed to the building manager in the high-rise building containing the rental unit on February 12, 2012. Tenant DD (the tenant) confirmed that the tenants received the landlord's 10 Day Notice posted on the

tenants' door on January 25, 2012. I am satisfied that these documents were served to one another in accordance with the *Act*.

The landlord first testified that a copy of the landlord's dispute resolution hearing package was posted on the tenants' door on February 2, 2012. I noted that the Residential Tenancy Branch (the RTB) did not receive the landlord's application for dispute resolution until February 3, 2012 and did not issue a Notice of Hearing regarding the landlord's application until February 3, 2012. The landlord asked for time to review records to confirm when the copy of the landlord's dispute resolution hearing package was posted on the tenants' door. In the interim, the tenant testified that the tenants did not receive a copy of the landlord's dispute resolution hearing package from the landlord. He said that the only material they received from the landlord was the landlord's 10 Day Notice and written evidence from the landlord.

At the hearing, I advised the parties that section 89 of the *Act* establishes special rules for the serving of an application for dispute resolution to a respondent, including an application for a monetary award. As the landlord did not serve notice of the landlord's application for a monetary award in accordance with section 89(1) of the *Act*, I advised that I could not consider the landlord's application for a monetary award. As section 89(2) of the *Act* allows a landlord to serve a notice to obtain an Order of Possession by posting a notice on a tenant's door, I advised the parties that I could consider the landlord's application to end this tenancy and obtain an Order of Possession.

During the hearing, it also became apparent that the landlord had not provided to the tenants all of the written evidence she sent to the RTB. However, the tenant agreed that he had a copy of a Reservation Agreement (the Agreement) that he signed on November 24, 2011, a document cited in a January 24, 2012 letter from the landlord "To Whom it May Concern." The tenant said that he did not sign the second and third pages of that Reservation Agreement and maintained that it was not attached to the document he signed on November 24, 2011.

#### Issues(s) to be Decided

Is the arrangement between the landlord and the tenants whereby the tenants have been residing in the rental unit a tenancy that falls within the jurisdiction of the *Residential Tenancy Act*? If so, should this tenancy be continued and should the landlord be issued an Order of Possession? If this matter falls within the *Act*, are the tenants entitled to a monetary Order or to any of the items requested in their application?

### Background and Evidence

The landlord entered into written evidence a copy of a June 10, 2010 Residential Tenancy Agreement (RTA) with the owner of this rental unit in a high-rise building. The landlord had the owner's permission to sub-let the premises. However, the business of the landlord is to offer executive quality properties on a short-term basis to guests who pay for a package of services from the landlord. In addition to accommodation, these services include access to the internet, telephone, basic cable television, utilities, linen, parking, and a range of concierge services.

The parties agreed that the tenants occupied the premises on November 24, 2011. The landlord named two tenants in the landlord's application for dispute resolution, Tenants DD and CR. The tenants maintained that all three tenants entered into a one-year fixed term tenancy. The parties agreed that the monthly rate was set at \$4,000.00.

The landlord maintained that the landlord's company, based in Alberta, does not prepare or sign RTAs with its guests because the agreement between the parties is done by way of a Reservation Agreement. At the hearing, the landlord confirmed that this Agreement is a commercial lease "and not made under the Residential Tenancy Act and therefore the Act does not apply to commercial leases." The landlord also confirmed the assertion made in the landlord's January 24, 2012 letter that "the guests do not have a contract or lease."

At the hearing, I asked the landlord to clarify her January 24, 2012 position with the landlord's issuance of a 10 Day Notice on January 25, 2012 and the landlord's current application to the RTB for an Order of Possession and a \$6,000.00 monetary award from the tenants. The landlord said that the landlord continues to assert that the arrangement by which the tenants continue to reside in the premises is not covered by the *Act* nor is there anything other than the Reservation Agreement in place with them. The landlord said that her company was uncertain as to whether it could obtain possession of the premises without applying for dispute resolution. In order to protect their interests in this matter and their escalating costs, the landlord chose to initiate the eviction process under the *Act*, even though the landlord does not believe that the Reservation Agreement is an RTA under the *Act*. The landlord said that the tenants secured the premises with the use of an invalid or fraudulent credit card, and have remained in the premises without a legal right to do so. The landlord asserted that the tenants have not paid either their deposit or any of the other charges owing which the landlord estimated at \$5,444.51 as of the date of this hearing.

The tenant said that in addition to the first page of the Reservation Agreement that he signed and the landlord entered into written evidence, all three tenants signed another

document when they moved into the rental unit on November 24, 2011. He and the other tenant who testified at this hearing said that they signed what they believed to be a one-year fixed term tenancy agreement, which the landlord's representative was supposed to copy and return to them. They said that the landlord's representative never provided a copy of this signed tenancy agreement to them. The landlord testified that her company never creates an RTA for signature and that the only possible document that could have been given to them was a "Form K document", which is not designed as a residential tenancy agreement but as a way of confirming that the occupants of a strata unit agreed to abide by the rules of the strata.

The tenants' application for a monetary award of \$3,700.00 included the following:

- \$800.00 hospital bill due to multiple heaters not working

- \$400.00 loss of income due to being unable to leave the building

- \$2,500.00 due to there being no internet available and for loss of income.

The tenants did not supply any written evidence, other than the basic details of their dispute included with their application for dispute resolution.

### Analysis

The *Act* requires that a landlord create an RTA for any new tenancy in this province. However, oral agreements to commence tenancies do occur and have legal effect under the *Act* if there is evidence that the parties entered into a contract to create a residential tenancy.

In this case, there is conflicting evidence as to whether any contract was entered into by the parties that would fall within the *Act*. The landlord said that her company is in the business of entering into relatively short term reservation agreements for executive accommodation. The tenants said that they signed what they believed to have been a one-year fixed term tenancy agreement. However, neither of the tenants who participated in this hearing could give much in the way of a description of the document they claim to have signed that was in addition to the Reservation Agreement entered into evidence by the landlord. I attach little weight to their assertion that they signed some separate agreement not entered into as evidence and never provided to them that gave them status as tenants under the *Act*.

Under these circumstances, the best evidence is any written document that sheds light on the exact nature of the relationship between the parties. In this instance, the only written evidence entered by either of the parties to describe the nature of their relationship is the Reservation Agreement (the Agreement) signed by Tenant DD.

The tenant observed that the departure date set out in that Agreement was November 24, 2012, which confirms that the landlord had agreed to rent the premises to the tenants for a one-year fixed term as maintained by the tenants. I agree that the “departure date” in the Reservation Agreement does seem beyond the scope of the landlord’s claim that her company only gets involved in “short-term” agreements to rent executive suites. However, I also find that many of the terms of the agreement seem quite distant from those of a standard one-year fixed term tenancy. For example, all payments referred to in this Agreement are by way of a credit card which remains on file during the duration of the stay. No damage deposit is applied but the credit card number is retained as the guaranty against damage. Those residing in the premises and listed in the Agreement are referred to as “guests” and not tenants. Of a more substantive note, the arrangements whereby a stay in the premises can be concluded require 30 calendar days of notice. By way of example, the Agreement specifies that a guest who decides to cancel a reservation on May 5<sup>th</sup> will be billed until June 4<sup>th</sup>. This provision is at considerable odds from those that would be set out in both a fixed term tenancy, which commits a tenant to the duration of the fixed term or even to a periodic tenancy where a tenant can be responsible for up to 60 days of rent to a landlord, depending on the date when written notice to end a tenancy occurs. According to the terms of the Agreement, lost and unreturned keys are subject to a \$500.00 charge to be applied to the guest’s credit card, once more in stark contrast to a standard tenancy agreement. There are references to “check-in” when new guests arrive in their “rooms” and to “early check-ins”. Throughout the Agreement, those staying in the premises are referred to as guests seeking reservations for the rooms the landlord offers to the public. Based on the totality of the Agreement, I find that the relationship between the parties is not one of a landlord and tenant that would fall within the *Residential Tenancy Act*.

In coming to this determination, I have considered Residential Tenancy Policy Guideline 14 which provides guidance regarding the distinction between commercial or residential tenancies. Although I recognize that there are some features of a residential tenancy to the relationship between the parties, for the reasons outlined above, I find that there are far too many non-standard features in their Reservation Agreement signed by Tenant DD, the only written document before me. For these reasons, I find that the contractual relationship between the parties is not a residential tenancy covered by the *Act* and as a result I have no jurisdiction to render a decision in this matter.

### Conclusion

I decline to hear this matter as I have no jurisdiction to consider either of these applications.

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 24, 2012

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Residential Tenancy Branch