



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened in response to an application filed by the tenant seeking a monetary order for compensation for damage or loss and recovery of the filing fee paid for this application.

The tenant confirmed that his name is LR not RL therefore this application has been amended to reflect this.

While the tenant appeared at the hearing the landlord did not attend. However, I am satisfied that the landlord had notice of this hearing because she did write a letter requesting that this hearing be adjourned.

### Issue(s) to be Decided

Do I have jurisdiction to hearing this matter. If so is the tenant entitled to the monetary order claimed?

### Background and Evidence

The tenant testified that he entered into a tenancy agreement with the landlord to rent a 2 bedroom garden suite in a bed and breakfast accommodation owned by the landlord. The tenant testified that he rented the suite for the months of April and May 2012 for business purposes. The tenant testified that to secure his reservation the landlord asked him to wire \$6,000.00 to her which he did on March 23, 2012. The tenant testified that the \$6,000.00 was comprised of \$2,400.00 in rent for each of April and May 2012 and a \$1,200.00 security deposit. In his written submissions the tenant states that due to unforeseen circumstances he had to cancel is reservation on March 27. The tenant submits that the landlord's cancellation policy on their website states that cancellations may be made 72 hours in advance without penalty. The tenant testified that he learned from the landlord that she did find new tenants to replace him however she did not return his \$6,000.00 deposit to him. The tenant testified that het landlord kept one month's rent of \$2,400.00 and a \$200.00 "administration fee" and

returned \$3,400.00 to him. The tenant is seeking to recover the \$2,600.00 the landlord has withheld from the \$6,000.00 deposit he paid.

### Analysis

Section 4 of the *Residential Tenancy Act* sets out what the Act does not apply to, it states in part:

This Act does not apply to

(e) living accommodation occupied as vacation or travel accommodation

The rental unit is a 2 bedroom “garden suite” in a bed and breakfast which the tenant rented for a period of 2 months for business purposes. The evidence of the tenant is that he paid his rent in full at the start of the tenancy. By contrast, in residential tenancies, rent is not paid in advance. It is paid periodically and the tenancy agreement indicates when the rent is due. Another unusual term of this “tenancy” is that the landlord offered a cancellation policy stating in part:

...72 hours notice in the event that you have to cancel your reservation without penalty, in the event of short notice cancellation we will charge you for the value of one day's reservation

Further, the wording and the terms contained in the “Residential Tenancy Agreement” are unusual when compared with a tenancy under the *Residential Tenancy Act*:

You are welcome to use the appliances washer dryer dishwasher refrigerator oven microwave, etc. Along with the dishes, pots and pans found in the suite kitchen)

And

Please be sensitive that this is a private home which you have access to and that should you plan to entertain more than 2 or 3 guests at a time that you advise the homeowner, Lee in advance. At this time, we ask that you do not have guests stay overnight unless the landlord is notified.

As well, while the Tenancy Agreement includes unusual terms not normally included in a tenancy agreement it does not include many of the standard terms that are required

under the Act to be included in a tenancy agreements such as if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis; if the tenancy is a fixed term tenancy and the date the tenancy ends, and whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date.

While the parties may call themselves landlord and tenant and they may call their tenancy agreement a “Residential Tenancy Agreement” this does not make this relationship a relationship between a landlord and tenant under the Residential Tenancy Act. In this case I find that the evidence shows that this tenancy was a temporary travel or vacation rental, not a residential tenancy. As such, as stated above, the terms included a cancellation policy which the applicant may wish to pursue in the Provincial Court of British Columbia I however, must decline to hear this matter.

### Conclusion

This claim is dismissed for lack of jurisdiction.

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: June 06, 2012.

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Residential Tenancy Branch