



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Midtown Suites

## **DECISION**

Dispute Codes      MNDC, MNSD and FF

### Introduction

This hearing was convened on an application from the tenants received on May 23, 2013 seeking a monetary award for loss or damage under the rental agreement or legislation, return of security and pet damage deposits and recovery of the filing fee for this proceeding.

By written submission and at the commencement of the hearing, the landlord challenged the jurisdiction of the *Residential Tenancy Act* over this matter on the grounds that it is specifically precluded by section 4(e) of the Act as “living accommodation occupied as vacation or travel accommodation.”

### Issue(s) to be Decided

This matter first requires a decision on whether the accommodation constitutes a tenancy that can be adjudicated under the *Act*, and if so, whether the tenants are entitled to a monetary award for the claims submitted.

### Background and Evidence

The applicants arranged to move in to the subject accommodation, a two-suite residential building, on February 25, 2013 with the intention of staying for approximately five weeks after having been temporarily displaced from their home due to a construction fire.

The applicants had been assisted by their insurance adjuster in locating the temporary accommodation and, as the proprietor was travelling at the time, her agent signed an agreement with the applicants on February 22, 2013 at \$2,400 per month and \$80 per day after 30 days. The tenants paid a standard security deposit of \$1,200. In consideration of the applicants' unfortunate circumstances, the proprietor waived the standard prohibition against pets to allow a cat, accepting a \$1,200 pet damage deposit and the applicants' agreement to treat the unit for fleas at the end of the stay.

The applicants were evicted on March 12, 2013 when the rental fee had not been paid, a payment the applicant stated was to be covered by insurance which the landlord said was not part of the agreement. She stated that the applicants had provided a credit card number for the rental fee which she tried to unsuccessfully to process three times after contacting the applicants.

The attending applicant submitted that this matter falls within the jurisdiction of the *Act* because, the written agreement is a residential tenancy agreement because it does not use the term "vacation property," the rental building is zoned a residential property, there is no business licence issued to the rental property address, and there is no signage in the accommodation as required by the regulations under the *Hotel Keepers Act*.

The proprietor submits that the agreement signed by the parties is, in every respect, a guest agreement which specifies daily, weekly and monthly stays and includes a provision that it may be terminated at any time for breach of rules, non-payment, etc. The agreement also provides for access at any time by the proprietor or her agents for inspection, repairs, maintenance or housekeeping. She stated, and submitted a corroborating written statement from her agent, that the agent reviewed the agreement in detail with the applicants before signing.

The issue of zoning is not relevant as that is an issue between the proprietor and the municipality and the proprietor stated that they advised her that specific business licence is not required where the proprietor owns the property, although she does have general licences.

The proprietor stated that all her properties are registered with CRA, GST, PST and WCB, are insured as vacation rental properties and are advertised only on her own web sites and other vacation property web sites and never as residential tenancies.

She stated that she operates her properties on that model as a matter of preference as the local community is a destination resort area due to local fishing and specializing in short term stays results in lower maintenance costs because of the periodic vacancies. She stated that, at the moment, the subject unit is occupied by a medical professional on a two week agreement, to be followed by another already booked.

Accommodations include all furnishings and amenities including books and dvd's and available housekeeping, gardening, snow removal, chef and concierge services.

### Analysis

While I find that the guest agreement is very clearly not a residential tenancy agreement, that alone would not preclude jurisdiction if common practice indicated otherwise.

However, I find the only variation made by the proprietor from a short term vacation rental, such as permitting a pet and allowing a delay in the advance payment provision, were made in consideration of the unfortunate circumstances of the tenants' temporary displacement by the fire in their home. Therefore, I find that the agreement in question is not a residential tenancy agreement and decline jurisdiction for that reason.

### Conclusion

The application is dismissed for want 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: August 27, 2013

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Residential Tenancy Branch

