



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HEZZ CAMP CO. LTD d.b.a. RIVERBEND RESORT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC MNDC O OLC RP FF

### Preliminary Issues

The parties confirmed the Respondent named in this application was an owner or Agent of the Corporation and the Corporation should be named as Respondent. Accordingly, the style of cause was amended to include the Corporation's name, in accordance with section 64 (3)(c) of the *Act*.

The witness was excused at the outset of this hearing and was told that if his testimony was required he would be called back into the proceeding, in accordance with the *Residential Tenancy Rules of Procedure*. The Applicant indicated that her witness could provide testimony pertaining to his own occupation at this resort and could provide confirmation as to how long she has resided there.

After each party provided their testimony I determined that I did not need to hear from the witness as his occupation had no bearing on the matters that were before me and because there was no dispute as to how long the Applicant has resided in the current unit.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Applicant on November 14, 2013.

The parties appeared at the teleconference hearing and gave affirmed testimony. The Applicant confirmed receipt of all of the Respondent's evidence. The Respondent did not receive copies of the e-mails or photos provided in the Applicant's evidence.

The Applicant confirmed that they did not provide the Respondents with all of their evidence which I find to be in contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the

other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Respondent has not received copies of all of the Applicant's evidence I find that the un-served evidence cannot be considered in my decision. I did however consider the Applicant's testimony and all evidence that was served upon the Respondent.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

Does this matter fall within the jurisdiction of the *Residential Tenancy Act*?

#### Background and Evidence

The Applicant testified that she is of the opinion that this matter falls within the *Residential Tenancy Act* because she has resided in the same R.V. unit since June 27, 2013. She stated that except for a period in August 2013 when she was required to vacate the unit for another guest, she has resided in the RV located at site # 15. This unit is owned by the Respondent and is skirted and has a deck. It is plugged into an electrical post and is plumbed for sewer.

The Applicant stated that she has not entered into a written tenancy agreement and she signs a guest form each time she pays rent because it is required by the Respondent. She was told her occupation was based on a month to month reservation but she does not make reservations. She was also told that she may have to leave if they have other guests booked for the unit, which she was required to do back in August 2013. She pays a different amount each month, which includes a charge for GST, and this amount includes all utilities and cable. At no time was she required to pay a security deposit. She currently has a post office box for her mail; however, there was a time when she was sent mail to this address, which she picked up at the office. Although there are services provided at this location, such as group activities, laundry and housekeeping, she does not utilize those services as she leads a quiet life and does the work herself.

The Respondent testified that she has not issued a *Residential Tenancy Branch* eviction notice because she is of the opinion that this occupation does not constitute a residential tenancy. She pointed to her evidence which includes a letter issued by the regional district on October 21, 2013, and clearly states that use of their property is not zoned for permanent occupancy or residency. She argued that the Applicant's occupancy has always been temporary accommodation based on a license to occupy, which the Applicant signs each time she pays for her stay.

The Respondent stated that the Applicant has always known well in advance that she would have to leave if they great other reservations; and in fact she was required to move out back in August when they needed the site for other guests. They operate a commercial business and sign up for services from various internet booking organizations and any guests who book through those site have priority for occupation of their facility. The Applicant has even referred to her occupation as temporary, as supported by the e-mail the Applicant wrote and was provided in evidence.

The Respondent argued that the fact that they charge different "seasonal" daily rates and collect tax confirms they are entering into a license to occupy and not a tenancy. The Applicant can leave at any time without providing notice and they have the right to not extend her stay or ask her to leave without notice.

In closing, the Applicant argued that she has only ever been asked to leave once and that she has occupied the unit, uninterrupted since the beginning of August 2013. She also stated that she expect proper 48 hour notice before any contractors enter her unit which is required under a tenancy agreement.

The Respondent noted that they provide a variety of "temporary" services to all their guests, such as receipt of mail and housekeeping, but that does not mean all guests utilize such services and it does not mean that their guests have exclusive possession of the units they occupy.

### Analysis

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting exclusive possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

The Residential Tenancy Policy Guideline # 9 provides that a license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month. The landlord may only enter the site with the consent of the tenant, or under the limited circumstances defined by the Act. A licensee is not entitled to file an application under the *Residential Tenancy Act*.

If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise. In order to determine whether a particular arrangement is a license or tenancy, the arbitrator will consider what the parties intended, and all of the circumstances surrounding the occupation of the premises.

Some of the factors that may weigh *against finding a tenancy* are:

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The occupier does not pay a fixed amount for rent.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.
- The written contract suggests there was no intention that the provisions of the *Residential Tenancy Act* apply.

The arbitrator will weigh all of the factors for and against finding that a tenancy exists, even where the written contract specifies a license to occupy or tenancy agreement. It is also important to note that the passage of time alone will not change the nature of the agreement from a license to occupy or a tenancy.

In this case evidence that would support that the parties may have entered into a tenancy agreement consists of:

- (1) The Applicant has occupied the same R.V. unit at site #15 continuously since early August 2013;
- (2) The Applicant has received mail delivery at this property in the past; and
- (3) She is notified in advance before anyone enters her unit.

Notwithstanding the forgoing evidence that supports a tenancy may exist, I considered the following evidence which would indicate this situation involves a license to occupy:

- (1) The municipal zoning does not allow for permanent occupancy or residency;
- (2) No security deposit has been paid;
- (3) Occupation is based on a daily rate which is seasonal and changes regularly;
- (4) GST is charged on all payments for occupation;
- (5) The occupant signs a guest registration document agreeing to the terms and conditions of a license to occupy each time she makes a payment for occupation to secure her reservation or stay for another length of time;
- (6) The occupant does not have exclusive possession of the unit as the undisputed evidence indicates she has been required to vacate the unit in the past to accommodate other guests;
- (7) Either party may end the license to occupy without notice, such as when there are other reservations or bookings pending;
- (8) Services are provided to all occupants, regardless if they choose not to take part;
- (9) The parties understood that this accommodation was temporary, as stated in an e-mail communication generated by the Applicant.

Having weighed the above factors, I find this arrangement to be a license to occupy and not a Residential Tenancy agreement. Accordingly, I decline to hear these matters for want of jurisdiction.

### Conclusion

I HEREBY DISMISS this claim, 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: January 15, 2014

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Residential Tenancy Branch

