



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Acadian Inn - Kamloops  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            OLC, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order that the landlords comply with the *Act*, regulation or tenancy agreement.

Both tenants and the named landlord attended the hearing, and the landlord was represented by legal counsel. The landlord also called one witness who remained in attendance throughout the hearing with the consent of the tenants, in order for the witness to assist the named landlord whose first language is not English.

At the commencement of the hearing, counsel for the landlords raised a jurisdictional issue stating that the *Residential Tenancy Act* does not apply to this dispute, pursuant to Section 4(e) because the rental unit is vacation or travel accommodation. The parties were given the opportunity to be heard and each gave submissions on the jurisdictional issue, and the landlords' counsel was given the opportunity to question one of the tenants about the submissions made by that tenant.

The hearing did not conclude during the time slot scheduled and was adjourned for a continuation of testimony to later in the day. The parties agreed that the submissions of the tenant during the morning session will form a part of the testimony, and the tenant testified under affirmation that the submissions he made earlier in the day were true. The landlord and the landlord's witness also gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Does this tenancy fall within the jurisdiction of the *Residential Tenancy Act*?
- Has the tenant established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically to comply with the terms of the tenancy agreement and provide services or facilities?

### Background and Evidence

The landlord submits that this tenancy is the rental of a motel room and when the tenants moved in, it was rented as such. The sign says it's a motel, it's advertised as a motel, and has been a motel for over 50 years.

The landlord further submits that the tenants refused housekeeping service and then stopped paying for the room. The police attended to deal with a disturbance on the property and the tenant advised the officer that it was a month-to-month tenancy so the police declined to get involved. There is a 3<sup>rd</sup> building on the property for residential tenancies, but that is not where the tenants are staying.

The landlord also submits that the landlord has left blank application forms for tenancy at the Ministry office to encourage rentals from social assistance. He stated that the tenant obtained a blank form from the Ministry office and filled it out. The copy that the tenant has provided for this hearing contains a signature of the landlord, but that is not the landlord's signature. Further, the landlord has provided a sworn Affidavit for this hearing, and submits that the signature is not the same.

The tenant paid a daily rate of \$96.25 and the landlord also collected a \$100.00 security deposit at the commencement of the rental arrangement.

The tenant testified that he rented by the day for a couple of days at the beginning, possibly 5 days prior to July 1, 2014. The tenant received the form to complete as "an intent to rent." The form applies to any rental accommodation for clients on disability, and the process is to have the form signed by the landlord, then the social worker calls the landlord to confirm the rental amount before issuing a cheque. The tenant receives a cheque from the Ministry for the rent, and because the tenant has not defaulted in rules provided by the Ministry, the rent cheques do not go directly to the landlord. If the tenant defaults, the Ministry will discontinue paying the tenant the rental amount and will start to issue cheques directly to the landlord.

The form had no stamps on it, and the tenant completed the form and gave it to the landlord's employee, who looked at it and gave it to the landlord, and the tenant witnessed the landlord sign it. The tenant had filled it out, and made an error on the dates, and it was actually signed on June 30, 2014. The parties also had a discussion about the \$100.00 that the tenant had paid being applied to the security deposit, and the landlord and his employee each gave a nod of agreement. Following that, the tenant advised the maid service that now that he was on a month-to-month tenancy, they didn't need to clean his room.

On the last Wednesday of June, 2014, being welfare day, the tenants paid the landlord the security deposit. The tenants have a dog so the landlord wanted the tenants to rent the run-down unit. At the beginning of July, 2014 the tenant paid the landlord \$825.00 in cash. The

tenant asked in August for receipts, after the tenant had paid an additional \$825.00 for August rent, and the landlord provided 4 receipts. Copies have been provided, and the first shows an arrival date of July 1, a departure date of July 6, and room rent of \$375.00 + GST of \$56.25, totalling \$431.25. The next shows July 6 to July 13 for \$525.00 + \$78.25 GST, for a total of \$603.75. The next shows a date of July 14 but the amounts are not legible. The next shows July 20 to July 26 for \$450.00 + \$67.50 GST, for a total of \$512.50. The tenant testified that he had asked for receipts at the end of July so that the tenant could prove to the Ministry that rent was being paid. The tenant also paid abrit every day in August, and had paid for the entire month by the 22<sup>nd</sup> or 23<sup>rd</sup> of July, 2014.

Near the end of July or beginning of August the tenant and the landlord's employee had an argument; the landlord wanted to change the tenancy to a daily rate. The tenant did not agree and stopped paying rent. Then the landlord disconnected the power for a day and removed the TV. The last rental payment was on August 11, 2014 which covered rent to mid-October. The tenant testified that including the time prior to the commencement of the month-to-month tenancy, he paid the landlord almost \$4,000.00. As soon as the tenant served the landlord with the Application for this hearing, the key card to the rental unit didn't work and had to be re-set daily at the office and staff refused, the air conditioning didn't work, the landlord's employees entered illegally, and access to the paid laundry was rudely denied. The power was off for a day, but all else has been off since August. Plugs and the microwave work now but the air conditioning does not.

The landlord testified that the TV is still in the rental unit and the locks have not been changed. The entry doors are electronic keyless locks. There are occasions where breakers trip and when the landlord is aware of it, he turns it back on.

The landlord further testified that in 2008 he had an arrangement with an outreach program for low-cost rentals, but that was only for 4 months.

The landlord's witness testified that he is an employee of the landlord and testified that the laundry was not withheld from the tenant, but the machines were not working for about 1 ½ months. The landlord gains a lot of revenue from it so the landlord would not deny access.

The witness further testified that the rental unit was in new condition at the time that the tenant moved in but not now. In mid-August there was an incident of an overdose and when police were there the witness asked an officer if there was a TV, to which he replied there was but it was not in good shape.

The witness also testified that if guests use a lot of electrical items, it becomes a heavy load for the breaker. The day the tenant complained that power was turned off, it really wasn't. The witness personally turned the breaker back on several times and 3 times in one single day. Police were called, which wasn't necessary; if the tenant had asked the witness would have

turned it on. The tenant did call and during the second call the witness told the tenant that he couldn't overload the breaker circuits by having several plugs and the microwave in use.

### Analysis

I have reviewed the documentation provided by the parties and I have carefully examined the signatures of the landlord on the alleged tenancy agreement and on the landlord's Affidavit. I have also considered the testimony and submissions of the parties, and I found the tenant's testimony to be very forthright, consistent, believable and consistent with the evidentiary material. I find the signature of the landlord on the affidavit, if deliberately spread out, and the signature on the tenancy agreement, if signed by initials or quickly, are from the same person. I do not accept that the tenant or a person on behalf of the tenant has forged the landlord's signature. Therefore, I find that the landlord did sign the tenancy agreement and I accept jurisdiction with respect to the tenants' application.

Having found that a tenancy exists under the *Residential Tenancy Act*, I hereby order the landlord to comply with the terms of the tenancy agreement.

I further order the landlords to comply with the *Residential Tenancy Act* by providing services as set out in the *Act* and the tenancy agreement.

### Conclusion

For the reasons set out above, I hereby order the landlord to comply with the terms of the tenancy agreement.

I further order the landlords to comply with the *Residential Tenancy Act* by providing services as set out in the *Act* and the tenancy agreement.

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: October 29, 2014

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Residential Tenancy Branch

