



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS FOUNDATION, COMMUNITY BUILDERS  
BENEVOLENCE FOUNDATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

OLC, O

### **Introduction**

This ex parte hearing was convened in response to an application seeking an interim order that the Residential Tenancy Act (the Act) applies to the applicant's living accommodation: a room in a residential hotel.

The teleconference hearing was attended by one of the applicants and their legal representative.

### **Issue(s) to be Decided**

Does a tenancy exist in this matter?

Does the Act apply to the subject living accommodation of this matter?

### **Background and Evidence**

The applicants jointly reside in the same room of the residential hotel. They have resided in the subject room of the residential property since December 2015. The applicants pay a sum of \$750.00 each month payable on or before the 1st. of each month for exclusive possession of their room. At the outset of their residency the applicants paid a security / damage deposit in the sum of half their respective portion of the rent of \$187.50 each. In addition the applicants and the named respondent signed a "Tenant Commitment" titled Safe and Supportive Program Housing Policies. The

document was signed as *tenant and landlord*. A copy of the document was submitted to the hearing. The document states to be a tenancy agreement and purports to guide the applicant's conduct during their residency.

The applicants provided that the living accommodation is their sole and permanent home and not transitional or short term; however, at the start of their residency the tenant was told the living accommodation was "not forever". In addition the applicant testified that the respondent offers a breakfast and a supper each day as part of the residency. The applicant testified they are not aware of another service offered or provided by the respondent associated with the living accommodation. Effectively, the applicant and their counsel argue that the living accommodation is not one prescribed within Section 4 of the Act.

In addition, the applicants provide that the respondent treats their living accommodation as if a tenant/landlord relationship exists in respect to a tenancy guided by the Residential Tenancy Act, although the respondent claims it is not covered by the Act.

The applicant provided into evidence a recent Decision of the Director respecting a near unit to the applicant on the same residential property. The Decision confirms that the near unit is within the jurisdiction of the Act. The applicant knows the near unit as operating within the same conditions as their own unit.

The applicant further provided copies of Residential Tenancy Branch 10 Day Notice(s) to End Tenancy given to the applicant in April and October 2016 on those occasions the applicant was late paying their rent. The applicant purports the Notices are proof the respondent considers the Act applies to the living accommodation in question.

### **Analysis**

Based on the applicants' submissions I find that the applicants paid a security deposit in advance of their occupancy, and have been paying rent payable monthly in advance on or before the 1<sup>st</sup> of each month since December 2015. I find that these payments grant to the applicant exclusive possession of the unit.

I am satisfied the living accommodation in question is a supported residency, however, I am not satisfied the living accommodation is emergency housing in nature or is guided by timelines or program services suggesting it is transitional housing. Further, while I am not bound by precedent of another Arbitrator's decision I find the applicant's submission respecting the same residential property and of a similar unit to the applicant's unit compelling and relevant to my consideration.

I find that the landlord's use of approved Residential Tenancy Branch forms to administer the living accommodation is proof the respondent considers that the Act applies to the living accommodation.

On preponderance of the applicant's evidence and on review of Section 4 of the Act I do not find a basis to support that the living accommodation in question is excluded from the Act's jurisdiction.

As a result of all of the above, I find that the living accommodation in question is residential accommodation and the Residential Tenancy Act applies. A tenancy exists, and the applicant's room is effectively not exempt from the Act.

**Section 59(6)** of the Act allows an individual occupying a room in a residential hotel to make an application for dispute resolution, without notice to any other party, requesting an interim order that this Act applies to that living accommodation.

**I grant** the applicant an **Interim Order** that the *Residential Tenancy Act* applies to their living accommodation. Both parties of this tenancy are respectively **Ordered to comply with the Act.**

**I Order** that the applicant must provide the respondent with a copy of this Decision as soon as possible and **no later than 3 days** after receipt of the Decision.

### **Conclusion**

The applicant's request pursuant to Section 59(6) has been granted.

**This Decision is final and binding on both parties.**

*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: November 09, 2016

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Residential Tenancy Branch