



Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF MND MNDC MNR OPN OPR

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlords' application for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;
- an Order of Possession for Notice pursuant to section 55 of the *Act*;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent, and for money owed for damage or loss under the *Act*;
- a Monetary Order pursuant to section 67 of the *Act* for damage to the unit;
- an application to keep all or part of the damage deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenant, pursuant to section 72 of the *Act*.

The general manager of the property, along with the area general manager appeared on behalf of the landlord, while the tenant was represented at the hearing by her daughter, who is her acting Power of Attorney.

### Preliminary Issue – Jurisdiction

At the outset of this hearing, I explained to the parties that I had concerns centering on my jurisdiction to hear this matter. The area general manager testified that he had contacted a provincial organization that caters to senior citizens and was assured by this organization that the portion of the retirement facility in question fell within the *Residential Tenancy Act*. I stated to both parties that I would consider evidence related to the matter contained in the Landlord's Application but would reserve making a decision concerning the issue of jurisdiction until the conclusion of the hearing.

In considering this matter, I turn my attention to section 4(g)(v) of the *Act*. This section states:

**4** This Act does not apply to

(g) living accommodation...

(v) in a housing based health facility that provides hospitality support services and personal health care...

The landlord's representatives maintained these were separate rental units forming part of a larger retirement community. They explained that each suite was equipped with a

kitchen, and a private bathroom and the tenants had free access to move about the premises as they saw fit.

I appreciate that these individual units within the complex may have the appearance of self-contained apartments; however, the facility provides both *hospitality support services* and *personal health care*.

Specifically, the landlord's representatives testified that the facility provided to A.A.—

- meal delivery to the individual units from the cafeteria;
- morning and afternoon coffee and snacks;
- weekly housekeeping where the resident's sheets and towels were washed;
- daily room checks at 10:30 A.M. to ensure the safety of residents;
- medication services;
- a main reception desk which could be reached directly by phone from the room; and
- arrangements for an outside caretaker to come on premises and provide assisted care services to residents.

In the case of A.A., emails between the tenant's daughter and the landlord demonstrate that an outside health practitioner would regularly visit the tenant to provide bath services. While not expressly provided by the landlord, arrangements were made to allow for an outside health practitioner to visit and care for A.A.

A close examination of section 6.7 of the tenancy agreement signed between the parties details the services that are included in rent. In addition to the services detailed above, the following items are also included in the monthly rent:

(C) Services:

- (i) two meals per day
- (ii) weekly light housekeeping (including vacuuming, dusting, cleaning of bathroom and kitchen)
- (iii) 24-hour security monitoring services
- (v) unlimited access to scheduled social and recreational activities.

Further to 6.7, section 6.8 of the tenancy agreement describes services “which are [available] at the request of the Tenant and which are not included in the rent;”

- (a) Tray service
- (b) Furnishings and additional equipment

- (c) Telephone and internet service
- (d) Enhanced cable TV package
- (e) Additional cleaning
- (f) Guest services including meals and accommodation
- (g) Unscheduled activities and outings where there may be charges for participation
- (h) Hair dresser; **health services**
- (i) Purchases from the store

In addition to these above detailed provisions, the tenancy agreement contains a clause in section 14 prohibiting noise except from 11 a.m. until 9 p.m. which is much narrower in scope than permitted by most civic by-laws, and a clause in section 22 that provides for rules and regulations surrounding the installation of oxygen life-support equipment in the residential premises.

The evidence therefore shows that the landlord provides hospitality support services and personal health care. Although A.A. has not necessarily made use of all of the services that the landlord offered to residents in this property, it is clear that a factor involved in choosing to enter into this type of living arrangement was the potential for residents to obtain these services directly from the landlord.

After considering all of the factors outlined above and after listening to the oral testimony of the parties, I find that I am without jurisdiction to consider the landlord's application as the *Act* does not apply to this tenancy because it is excluded by section 4(g)(v) of the *Act*.

#### Conclusion

I decline to rule on this matter as I have no jurisdiction to consider this application. 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: February 1, 2017

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Residential Tenancy Branch

