



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR FF LRE MNDC RP**

Introduction

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

- an Order to cancel the respondent's Notice to End Tenancy pursuant to section 46 of the *Act*;
- a Monetary Order for damage or loss under the *Act* pursuant to section 67;
- an Order for the respondent to make repairs to the rental unit pursuant to section 33;
- an Order to suspend or set conditions on the respondents' right to enter the rental unit pursuant to section 70 of the *Act*; and
- a return of the filing fee from the respondents pursuant to section 72 of the *Act*.

The applicants, respondent M.B. and counsel for the respondents, M.M. appeared at the hearing.

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. Counsel for the respondents stated that he had considered this matter may fall outside the scope of the *Residential Tenancy Act*; however, he felt satisfied that a tenancy had been established pursuant to section 4 of the *Act*. I stated to both parties that I would consider evidence related to the matter contained in the Application for Dispute Resolution 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(e) of the *Act*. This section states:

- 4** This Act does not apply to:
- (e) living accommodation occupied as vacation or travel accommodation.

M.B. explained that the occupants of the unit booked the suite through a website that advertises itself as the “world leader in online travel and related services.” On November 18, 2016, the occupants paid the advertised nightly rate of \$120.00 per night, as well as a hotel tax. The original booking received by M.B. was for two nights. On December 3, 2016, the applicants began paying a discounted, weekly rate of \$590.00 per week. The occupants continued to pay a hotel tax for the first 33 days of their occupation.

M.B. provided testimony that persons who pay the weekly hotel rate receive weekly housekeeping as well as free parking and wifi. M.B. stated that it was the hotel’s policy to rent out rooms by the week only in the winter months. During the summer, the hotel does not accept weekly bookings and only accepts nightly guests.

Counsel for the respondents explained that no tenancy agreement was signed between the parties, no security deposit was collected by the respondent and the property was licensed as a hotel.

Residential Tenancy Policy Guideline #27 provides guidance on matters related to jurisdiction. Section B of *Policy Guideline #27* notes:

The legislation does not confer upon the RTB the authority to hear all disputes regarding every type of relationship between two or more parties. The RTB only has the jurisdiction conferred by the Legislation over landlords, tenants and strata corporations... *Occupancy of a hotel is a license and if occupied pursuant to a tenancy agreement, the Residential Tenancy Act assumes jurisdiction and confers power upon the RTB over certain hotels and hotel tenants. The RTB will therefore hear the dispute if the tenant is a hotel tenant under a tenancy agreement.*

The evidence therefore shows that the landlord provides living accommodation occupied as vacation or travel accommodation. Although the applicants have no other address at which they identify as living, it is clear that the premise is listed as a hotel and offers services to potential occupants that are readily available through numerous online, travel booking websites. There was no tenancy agreement and the applicant did not have exclusive possession, as housekeepers had keys for weekly access to the premises and the owner of the property testified that the units would be rented as day-to-day rentals in the summer.

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(e) 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: March 29, 2017

Residential Tenancy Branch