



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O, OLC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy
- b. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that a type Notice to End Tenancy dated May 1, 2017 was served on the Tenant on May 1, 2017. It is not in the approved form. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord's agent on May 21, 2017. With respect to each of the applicant's claims I find as follows:

Background and Evidence

The rental property was initially a motel. The landlord purchased the property a couple of years ago. There are 22 units on the property. Seventeen of the units are used for long term stays. The remaining 5 units are used for short term stays.

The tenant rented a 1 bedroom unit at the resort. On December 31, 2015 the tenant signed a document renting a 2 bedroom unit for a rent \$795 per month. His security deposit of \$350 from the previous one bedroom unit was transferred to this unit. The document states the room was rented under the Hotel Keepers Act and the Resort reserved the right to call the RCMP to have a guest removed. It further provided that the Residential Tenancy Act does not apply.

The document also provides that all extended stay guests staying 30 days or more who wish not to extend their stay must give written notice 30 days prior to the end of their term. Hydro was included up to an allowable amount of consumption. However, anything used over the allotted amount was charged to the guest. .

Grounds for Termination:

On May 1, 2017 the landlord gave the tenant a notice stating that the Resort does not wish to extend your stay with us beyond May 31, 2017 1:00 p.m.

The following are the reasons why we have decided to not extend your state....

Loud music beyond 11 p.m. which causes disruption to the other guests. Verbal and written abuse towards the caretaker and other guests. An assault causing bodily harm to another guest. Disrupted drunken behavior in common property areas causing disturbance.

The respondent produced a number of letters from other residents. She testified the tenant is violent, has assaulted other residents, verbally abusive and is responsible for two other tenants vacating.

The tenant denies these allegations.

Issue to be Decided:

The issue to be decided is whether the Residential Tenancy Act applies? The landlord submits the rental of this room is under the Hotel Keepers Act and thus the Residential Tenancy Act does not apply. The tenant submits the Residential Tenancy Act applies. .

Analysis:

The definition section of the Residential Tenancy Act provides as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 2 and 5 of the Act provides as follows:

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

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Policy Guideline #27 includes the following:

b. Hotel Tenants

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.

After carefully considering all of the evidence I determined this was a residential tenancy matter and the Residential Tenancy Act applies for the following reasons:

- 17 of the 23 units in the rental property are for long term stays.
- This tenancy began on December 31, 2015 and has continued since then. It is his home and not temporary accommodation.
- The tenant was not charged GST or provincial government tax for the purchase of accommodation.
- The Tenant paid a security deposit.
- The agreement provided that should an extended stay guest wish not to extend their stay they would have to give 30 days notice.
- The Tenant was obliged to pay an additional amount for hydro over an allowable amount. This is more consistent with a residential tenancy than the rental of a hotel room.
- While the agreement provided that it was given under the Hotel Keepers Act, the Residential Tenancy Act provides that the parties cannot contract out of the Act.

- The Residential Tenancy Act includes a licence to occupy a rental unit.
- The tenant was responsible for cleaning the suite on a daily basis.
- The landlord did not produce evidence that typical hotel services such as room service were available to the occupant of the rental unit.

Determination and Orders:

In summary I determined that the Residential Tenancy Act applied. As a result I determined that I have jurisdiction.

Section 52 of the Residential Tenancy Act provides that If a landlord wishes to end a tenancy the landlord must give notice in the approved government form in or for the Notice to be effective. In this case the landlord failed to use the approved form.

As a result I ordered that the Notice dated May 1, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

The landlord retains the right to serve a notice in the approved form and the determination of whether there are grounds for termination would be adjudicated should the Tenant file an Application to Dispute that Notice.

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: June 19, 2017

Residential Tenancy Branch