



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HIGHSTREET ACCOMODATIONS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF, O

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Applicants for: money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”); to recover the filing fee from the Respondent; and for “Other” issues.

The Applicants, legal counsel for the Respondent Company, and the owner of the Respondent Company appeared for the hearing. Legal counsel also provided a witness for the hearing. All testimony was taken under affirmation. Legal counsel confirmed receipt of the Application and the Applicants’ 46 pages of documentary evidence. Legal counsel also confirmed the Respondent had not provided any documentary evidence prior to this hearing.

The hearing process was explained and no questions on how the proceedings would be conducted were asked. The parties were given a full opportunity to present evidence, make submissions, and to cross examine the other party on the evidence provided. While the parties provided extensive evidence and submissions during the hearing on a number of issues pertaining to the Application, I have only documented that evidence which I relied upon to make findings in this Decision.

### Preliminary Issue

During the hearing, I determined that based on the evidence before me, I must first turn my mind to the question of whether I have jurisdiction in this matter before I am able to consider the merits of the Application and make legal findings. The parties were informed of this during the hearing and were given the opportunity to provide evidence and make submissions on the issue of jurisdiction as follows.

The Applicants explained that in June 2016 there was a fire in the apartment they owned and lived in. As a result, the Applicants contacted their insurance company and a restoration company was put in place to restore the Applicants’ apartment.

The Applicants explained that although they looked at renting another place, their insurance company would not pay the security deposit and the first and last month's rent after reviewing the properties they were looking to rent. As a result, the Applicants then contacted the Respondent, who was a preferred property management company of their insurance company. As a result, the parties signed a document which was submitted into evidence at pages 5, 6 and 7 of the Applicants' documentary evidence.

This comprised of a form titled "Fixed Term Booking Confirmation". This form details the arrival date as July 1, 2016 and shows the "guest name" as the male Applicant and the "Contact (Agent) Name" being the agent of the insurance company. The form also shows the name of the insurance company and the "Rate" as \$150.00 per night. However, the "Departure Date" field was left blank. The form also notes "Reservations are not confirmed until we receive this form back, signed by a responsible party. All extensions to fixed term reservations are subject to availability at the time of request".

The Applicants then pointed to a document which they stated was a tenancy agreement which is titled "Guest Registration Card" and contains the name of the male Applicant with a check in date of July 1. Again, the "Check Out" field was left blank.

The female Applicant testified that they took occupancy of the dispute unit on July 1, 2016 and submitted that this was a tenancy agreement with the company Respondent which they had entered into. The female Applicant testified that the amount of rent to be paid for the tenancy was a total of \$4,500.00 per month even though this was shown and split in the guest portfolio as being payable as \$150.00 per night.

The parties confirmed that rent was paid by the Tenant's insurance company directly to the Respondent's account. The parties were unable to confirm what date the rent was payable, except that legal counsel stated that the insurance company would pay the Landlord as and when the funds were readied for payment by the insurance company.

The parties confirmed that the Applicants vacated the rental unit on September 7, 2016 and for this time period the Landlord received monies owed from the Applicants' insurance company. After this time period the Applicants were moved by the Respondent to another rental location.

The parties confirmed that no security deposit was requested or paid by the Applicants except that the Tenants had to provide their credit card details from which monies would be taken if there was damage or liability to the rental unit, of which there was none. The parties also confirmed that if they wanted to end the agreement, only seven days of

written notice had to be provided. The parties were not aware of any other written notice or required period of time that had to be given to end the tenancy by either party.

The Applicants argued that this tenancy was for an indefinite period of time and was not a fixed term tenancy as suggested by the Respondent. The Applicants submitted that when the Respondent informed them that their tenancy for the dispute unit was going to be terminated on September 7, 2016, this was illegal and contrary to the Act as it should have been ended with a notice to end tenancy for the landlord's use of the property. The Applicants acknowledged that they did not raise this issue at the time because they were unaware of the rights and obligations under the Act.

Legal counsel explained that they are the tenant of the dispute property which is owned by their landlord. The Respondent Company then issues licences to occupy the dispute unit on a short term basis, mainly for insurance claims in order to house displaced residents temporarily while they wait for their homes to be restored. Legal counsel for the Respondent stated that the Applicants had been informed the agreement for them to occupy the dispute unit was for a fixed term of one month from July 1 to July 31, 2016 which was then extended for another month as the Respondents had informed their property was still undergoing renovation.

Legal counsel stated that at the end of July 31, 2016, the Applicants were informed the tenancy would not be renewed and had to finish on September 7, 2017 because the owner of the dispute unit wanted to occupy it. Legal counsel confirmed that they did attempt to get permission from the owner to extend the rental beyond September 7, 2016, but the owner was not agreeable. Legal counsel submitted that the Applicants were provided with the required seven days' notice to end the arrangement.

The Applicants provided email correspondence into evidence regarding communication they had during this arrangement between the Applicants and the Respondents as well as between the Applicants and their insurance agent. The email evidence at page 29 includes correspondence between the Applicants' insurance agent and an agent of the Respondent in which the insurance agent requests an extension of time to extend the stay.

#### Jurisdictional Analysis

The Act defines a tenancy agreement as 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 license to occupy a rental unit.

Policy Guideline 9 titled "Tenancy Agreements and Licenses to Occupy" states that a license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time.

Under a tenancy agreement, the tenant is given exclusive possession for a term, which can include month to month. The guideline continues to state that if there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise.

In order to determine whether a particular arrangement is a license or tenancy, an Arbitrator will consider what the parties intended, and all of the circumstances surrounding the occupation of the premises. Some of the factors that may weigh against finding a tenancy are:

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The occupier pays property taxes and utilities but not a fixed amount for rent.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.

The above factors by themselves are not sufficient in finding that a tenancy has been established under the Act. As the guideline points out, the circumstances of each situation must be carefully considered. Therefore, I turn to the circumstances and evidence before me to make the following findings on jurisdiction in this case.

I find that after carefully considering the totality of the circumstances before me, there was no intention for the parties to engage in a tenancy as contemplated by the Act. I make this finding because of the following reasons.

Firstly, notwithstanding that tenancies under the Act may be established by oral agreement, I find the "Guest Registration Card" and the "Fixed Term Booking Confirmation" documents do not constitute a tenancy agreement. This is because these

documents do not include any of the standard terms of a tenancy agreement required pursuant to Section 13 of the Act and do not detail any fixed amount of monthly or periodic rent and the date it was payable. The documents are also void of any information which provides clarity on the length of the tenancy, namely whether it was periodic or fixed term in nature.

Secondly, tenancies established under the Act allow for payment of a security deposit that cannot exceed half a month's rent. However, the documents furnished by the parties for this hearing do not provide for the requirement of a security deposit, and neither was one paid for in this tenancy. I find this is another indicator that a tenancy under Act had not been established.

Thirdly, I find the Applicant's insurance company had significant involvement in this arrangement. The insurance company approved the Respondent and paid for the duration of the Applicant's stay. In addition, the Applicant's email evidence shows that the insurance company had some involvement and consultation with both the Applicants and the Respondent in determining and arranging for the duration of the accommodation.

Finally, I am more influenced by the fact that the parties agreed that the tenancy could be ended with a seven day written notice. Periodic tenancies under the Act must be ended with a full rental months of written notice or pursuant to a fixed end date of the tenancy that provides the tenancy ends and a tenant is to move out of the rental unit.

In this case, I find the evidence of the parties was more akin to a period of stay which was dependant on the length of the restoration work that was being undertaken to the Applicants' apartment. If the work to the Applicants' apartment had been completed earlier than expected, the Applicants would have enjoyed the freedom of the same agreement to leave the dispute unit after giving seven days of written notice. I find that this is not a characteristic of a tenancy as intended by the Act and the parties cannot contract inside and outside of the Act to suit their circumstances.

I find the arrangement between the parties in this case is more reflective and commonly associated with a short term accommodation, like a motel or hotel. This is evidenced by the "Guest Registration Card" document which requires the Applicants to provide a credit card number for charges incurred or liabilities that arise as a result of their stay, and provides for a check-in and check-out time.

In these circumstances, I find the dispute unit was occupied by the Applicants for the purposes of emergency shelter and short term accommodation. The evidence shows

that the Applicants had been temporarily displaced from their home as the result of a fire which had in turn rendered their apartment temporarily uninhabitable and that the Applicants were seeking accommodation at the dispute unit until they could return back home.

Therefore, I find the dispute unit was provided subsequent to an unforeseen disaster and more so as emergency accommodation than a residential tenancy. In this respect, it should be noted that the Act does not apply to accommodation provided for emergency shelter or for vacation or travel accommodation which is akin to short term rentals.

Based on the foregoing analysis, I conclude there are too many factors in this arrangement that go against finding that a tenancy under the Act was established and entered into by the parties. As such, the evidence shows that the Act does not apply to this arrangement. I therefore find that I have no jurisdiction to render a decision in this matter. The parties may seek alternative legal advice to obtain resolution to this dispute.

#### Conclusion

For the reasons set out above, I decline to hear the claim for lack of jurisdiction.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 14, 2017

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Residential Tenancy Branch