



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Summer Hotel Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, CNC, OLC, OPR, MNR

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on August 22, 2017 for:

1. An Order cancelling two notices to end tenancy - Sections 46 and 47; and
2. An Order for the Landlord to comply with the tenancy agreement or Act - Section 63.

The Landlord applied on August 25, 2017 for:

1. An Order of Possession - Section 55; and
2. A Monetary Order for unpaid rent or utilities - Section 67.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions. During the hearing the Parties settled the dispute and both Parties claims over the occupation and possession of the unit. The Tenant confirmed that the claim for the Landlord’s compliance was in relation to the occupation and possession of the unit. The Parties did not settle the dispute over the Landlord’s claim for unpaid rent and utilities and the Decision on this part of the Landlord’s application is set out below the settlement agreement.

### Settlement Agreement

**The Parties mutually agree as follows:**

- 1. The Tenant will move out of the unit on or before 1:00 p.m. on February 28, 2018; and**
- 2. These terms comprise the full and final settlement of all aspects of this dispute for both Parties.**

Section 63 of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the settlement may be recorded in the form of a decision or order. Given the above settlement I find that the Parties have settled the dispute over the occupation and possession of the unit. In order to give effect to this settlement I grant the Landlord an order of possession effective 1:00 p.m. on February 28, 2017.

#### Preliminary Matter

It is noted that on October 17, 2017 the Landlord provided an evidence package to the RTB containing 4 pages and a usb device. The Tenant states that no such evidence package was received from the Landlord. The Landlord confirms that the documentary and digital evidence provided to the Residential Tenancy Branch (the "RTB") was not provided to the Tenant.

Rule 3.1 of the RTB Rules of Procedure provides that a respondent must be served with any evidence provided to the RTB that the applicant wishes to rely on at the hearing. As the Landlord did not provide the Tenant with the evidence provided to the RTB I decline to consider the Landlord's documentary evidence.

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

Is the Landlord entitled to unpaid rent and utilities?

#### Background and Evidence

There is no written tenancy agreement. The Landlord does not know when the Tenant moved into the unit. The Landlord states that the Tenant resides in the unit beside the room identified in the application as the dispute unit. The Landlord states that the

dispute unit is actually the office where the Landlord works and that the room next door where the Tenant lives has no number. The Landlord states that the Tenant resides in the only room in the hotel that contains a kitchen.

The Landlord states that prior to her arrival in May or June of 2016 the hotel was being managed by her partner. The Landlord states that the Tenant was living in the hotel at that time and was working with the partner. The Landlord states that her partner told her that the Tenant had paid \$350.00 once in 2010 and \$375.00 once in 2011. The Landlord does not know what rent was paid by the Tenant in 2016 and that since May 2017 this partner has no longer worked at the hotel. The Landlord does not know if the Tenant paid any security deposit. The Landlord states that the Tenant is required to pay utilities because the Tenant is living in a room that contains a kitchen. The Landlord states that no demand for the payment of utilities was ever given to the Tenant. I note that there is no accounting documentation provided by the Landlord as evidence for either the rent or the payment of any utilities.

The Tenant submits that until his employment as a hotel manager was terminated in May 2017 the Tenant had been employed at the hotel since 2005. The Tenant submits that as part of the employment he was provided with a room for no rent payable. The Tenant submits that after his employment was terminated no person has ever asked him to pay any amount of rent nor has the Tenant been asked to leave the hotel other than through the service of the two notices to end tenancy for cause and the current notice to end tenancy for unpaid rent . It is noted that a previous one month notice to end tenancy for cause was found to be invalid and was cancelled in a Decision dated July 18, 2017. The Tenant submits that he and the Landlord are currently in a dispute over unpaid wages.

### Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Section 7 of the Act provides that where a tenant does

not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Given the Landlord's lack of evidence in relation to any required payment of rent or utilities other than oral evidence of different amounts of rent being paid on two occasions several years ago and considering the Tenant's evidence that no rents were ever payable or collected, I find on a balance of probabilities that the Landlord has not substantiated that any amount of rent or utility amounts were or is payable. I therefore dismiss the claim for unpaid rent and utilities.

Conclusion

I grant the Landlord an order of possession effective 1:00 p.m. on February 28, 2017.

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, 2017

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Residential Tenancy Branch