



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI LRE MNDC MNSD

### 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:

- a Monetary Order for damage or loss under the *Act* pursuant to section 67;
- an Order disputing an additional rent increase pursuant to section 43;
- an Order to suspend or set conditions on the respondent's right to enter the rental unit pursuant to section 70 of the *Act*; and
- a return of the security deposit pursuant to section 38 of the *Act*.

The applicants, their advocate E.N. and the respondent appeared at the hearing.

### Preliminary Issue – Jurisdiction

At the outset of this hearing, the respondent explained that she had concerns centering on my jurisdiction to hear this matter. The respondent said she believed that the living arrangement established between the parties fell outside the scope of the *Residential Tenancy 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.

*Residential Tenancy Policy Guideline #27* provides further 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.*

At the hearing the advocate and the applicants did not dispute that the property in question was a motel but they sought to establish that this was a tenancy in a hotel as described above. The applicants provided sworn testimony that rent of \$750.00 per month was paid to the respondent and said that a security deposit of \$375.00 was paid to the respondent. The applicants said that rent and the deposit were paid in cash and that receipts for these payments were provided by the respondent but were subsequently lost during their eviction. The applicants argued that the respondent had signed a government form stating rent was \$750.00 per month but did not provide of copy of that form during the hearing.

The respondent disputed that a tenancy was established and provided physical evidence to the hearing as part of her evidentiary package demonstrating that a receipt for payment of \$849.83 was given to the applicants on September 29, 2017. This receipt shows that GST and a second tax were applied to their total bill of \$752.06 and notes that the applicants were registered as guests under the Hotel Keepers Act. The respondent acknowledged that she had rented a cabin to the applicants on a short term basis but said that she was licensed as a motel, carried on business as a motel and charged people who rented cabins during the low season a daily rate. Furthermore, the respondent denied collecting any security deposit from the applicants.

Based on the oral testimony presented to the hearing and the evidence submitted by both parties, I find that that the respondent provides living accommodation to be 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 motel and offers services to potential occupants that are readily available through numerous online travel booking websites. There was no tenancy agreement and the applicants were unable to produce sufficient evidence of a security deposit being paid, asserted a rate of rent which is directly rebutted by the respondent's evidence of the receipt she

provided to the applicants on September 29, 2017 and acknowledged that the property in question was a motel which would be rented as a day-to-day rental in the summer. I accept the respondent's evidence showing rent being paid by the applicants, along with GST and a second tax, both of which are applicable to a hotel operation. This form also said that the applicants were registered as guests under the Hotel Keepers Act.

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 application as the *Act* does not apply to this matter. I find the property is excluded by section 4(e) of the *Act* because it is a form of vacation or travel accommodation, for which GST and other taxes were collected.

### 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 15, 2018

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Residential Tenancy Branch