



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Tiki Village Inn Motel
and [Applicant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, LRE

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act*. The Tenant applied:

- for a monetary order for compensation for monetary loss or other money owed;
- for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement; and
- to suspend the Respondent's right to enter the rental unit.

The Applicant and an agent for the Respondent (the "Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Applicant and the Respondent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither party raised any concerns regarding the service of the Application, Notice of Hearing or the documentary evidence.

Preliminary and Procedural Matters

The Applicant submitted an amendment to her Application, which was served on the Respondent less than 14 days prior to the hearing; however, the Respondent said she received the amendment and had a chance to review it. In the amendment, the Applicant withdrew her request for her damage deposit back, because she said it was too soon to make this claim. I told the Tenant that she had not specifically applied for this, but she said that is what her monetary claim is for and that she wanted to withdraw

her Application for it at this point. With the agreement of the Parties, I accepted the Applicant's amendment.

The Respondent's company name is consistent with it being a vacation property. In the hearing, the Agent said the property (the "Inn"), is a motel or inn that also rents rooms on a monthly or weekly basis during the off-season of October 1 through to April 30 each year; it is a more typical vacation property for the duration of the year.

Given the nature of the Respondent's business, I find it necessary to determine whether I have jurisdiction to consider the matters before me - whether the rental unit in question falls more aptly under the *Residential Tenancy Act* or the *Hotel Keeper's Act*.

To start, I turn to the *Residential Tenancy Act* and the Policy Guidelines for guidance.

Section 4 of the *Residential Tenancy Act* states:

4 This Act does not apply to

...

(e) living accommodation occupied as vacation or travel accommodation.

Residential Tenancy Branch Policy Guideline 27 - Jurisdiction states:

Vacation or Travel Accommodation and Hotel Rooms

The RTA does not apply to vacation or travel accommodation being used for vacation or travel purposes. However, if it is rented under a tenancy agreement, e.g. a winter chalet rented for a fixed term of 6 months, the RTA applies.

Whether a tenancy agreement exists depends on the agreement. Some factors that may determine if there is a tenancy agreement are:

- Whether the agreement to rent the accommodation is for a term;
- Whether the occupant has exclusive possession of the hotel room;
- Whether the hotel room is the primary and permanent residence of the occupant.
- The length of occupancy.

Even if a hotel room is operated pursuant to the *Hotel Keeper's Act*, the occupant is charged the hotel room tax, or the occupancy is charged a daily rate, a tenancy agreement may exist. A tenancy agreement may be written or it may be oral.

The *Residential Tenancy Act* applies to persons living in hotels, motels or inns, depending on the circumstances. The following are circumstances I have considered in determining the jurisdiction question in this matter.

The Parties did not submit a tenancy agreement into evidence before me. However, the Applicant submitted a guest registration form stating that a damage deposit was paid by a cheque from the "Ministry", and that the Applicant was charged \$1,100.00 for the monthly rent. This receipt indicated that the Applicant also paid \$55.00 in G.S.T. for the rental unit.

In the hearing, the Applicant said that she moved in on September 26, 2018, having arranged to live there with her two children and another adult, but not specifying a fixed term for her stay. The Applicant did not have an alternate residence in which to live, and had stayed at the Inn from September 2018 until the date of the hearing in February 2019.

The Parties agreed that the rental unit has a microwave and a refrigerator, but not a typical kitchen with other appliances.

The Applicant said that when she moved in, the Respondent did not complete or provide her with a move-in condition inspection report. "The room was the way it was when we arrived. I just moved in and had my baby with me and no damages were done. If you went and looked at all the rooms, all the duvet covers are stained."

The Respondent said all rooms at the Inn are inspected prior to and upon check in with guests. She said they have pictures of the rooms in which the Applicant has stayed before and after the Applicant and her family moved in. However, the Respondent did not submit these photographs to the Residential Tenancy Branch web portal for me to consider.

The Respondent said that the Inn does weekly inspections via the cleaners, who tell management about such things as loose toys being stored near heat registers, since this could cause fires. The Respondent said, "that was our main concern, in addition to the smell from diapers."

The Applicant said there were no dirty diapers left in her room and that the toys were not kept near the register. She also said that the Agent went into her room without giving her 24 hours' notice. She said also they are not allowed to go into people's fridges who are renting on a monthly basis and that the Inn's staff had done so to her.

The requirement for inspections detracts from the Applicant's exclusive possession of the rental unit, which is required under section 28 of the *Act*, subject to a landlord's right to enter a rental unit pursuant to section 29 of the *Act*.

The Respondent said the Applicant was moved from unit to unit, based on the number of people with whom she was living, as the Applicant's circumstances varied from month to month.

The Respondent said the Inn offers cleaning services twice a week for the bathroom, floors, sheets garbage and recycling. However, the Parties agreed that the Applicant would use her own sheets in the rental unit. The Applicant said she declined the Inn's cleaning services, as she prefers to do the cleaning herself.

The Respondent said that she had the Applicant sign a "folio" form that states the rental unit operates under the *Hotel Keeper's Act* and not the *Residential Tenancy Act*. However, the Applicant denied knowledge of having signed this form and the Respondent did not submit it as evidence for this hearing, so I have not considered it.

These circumstances can be summarized as follows:

Fits under <i>Residential Tenancy Act</i>	Fits under <i>Hotel Keeper's Act</i>
Monthly, weekly rates from Oct 1 to Apr 30.	Run as a motel or inn – room charge <i>could</i> be paid daily, weekly, monthly.
Applicant's primary residence for five+ months.	Applicant moved from unit to unit.
Month to month rent.	Cleaning services available twice a week – bathroom, floors, sheets, garbage, recycling.
Damage deposit required.	Provided linens, until Parties agreed Applicant would use own, because of staining.
	No condition inspection report completed or provided to Applicant.
	Weekly inspections without notice – no exclusive possession.
	No kitchen, just a microwave & fridge in units in which she's stayed.

When I consider all the evidence before me in this set of circumstances overall, I find

the weight of the evidence is that this arrangement was not a tenancy under the *Residential Tenancy Act*. As a result, I decline to hear this matter for lack of jurisdiction and I encourage the Parties to seek independent legal advice in relation to the matter.

Conclusion

I dismiss the Applicant's Application without leave to reapply.

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 8, 2019

Residential Tenancy Branch