



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLIDAY TRAILS RESORTS  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of the security deposit, pursuant to section 38;
- authorization to recover the filing fee for their application, pursuant to section 72.

The two tenant applicants did not attend this hearing, which lasted approximately 16 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the resort manager and that she had permission to speak on behalf of the landlord company named in this application.

The landlord stated that she was not served with the tenants' application for dispute resolution hearing package. She stated that she found out about this hearing from the RTB, when she received an email about calling into the hearing.

### Preliminary Issue – Residential Tenancy Policy Guideline 17

Residential Tenancy Policy Guideline 17 states the following, in part (emphasis added):

*The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*

- a landlord's application to retain all or part of the security deposit; or
- **a tenant's application for the return of the deposit.**

*unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the*

*deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.*

As per the above, I would ordinarily be required to deal with the tenants' security deposit because the tenants have applied to obtain a return of it, even though the tenants have not appeared at this hearing. The landlord confirmed that she obtained a security deposit of \$500.00 from the tenants and that she continues to retain \$267.00 from it.

#### Preliminary Issue – Jurisdiction to hear Matter

The landlord testified regarding the following facts. The rental property is a campground referred to as a "resort" by way of the landlord's property name. The rental unit is a cabin that is located in the campground. Both parties signed a written contract beginning on November 1, 2017. Page 3, clause 16 requires the tenants to pay a "daily license fee for use and occupancy of the site" of \$1,050.00 including GST tax per 28 days. Page 3, clause 20 indicates that the use of the site is "intended for temporary, seasonal, recreational and vacation purposes only." Page 4, clause 23 states that the Campground has "unrestricted access" to the tenants' site. Page 5, clause 37 states that the tenants have a temporary contractual license and it is "not a lease or tenancy agreement" and that the license does "not confer any interest in land to the Occupant."

Pages 3 and 4, clause 21 indicates that the license to use and occupy is for a "temporary term, and the Occupant maintains and will maintain a permanent residence outside of the Campground..."

Section 4(e) of the *Act*, outlines a tenancy in which the *Act* does not apply:

**4** *This Act does not apply to*  
*(e) living accommodation occupied as vacation or travel accommodation.*

Section 1 of the *Act* defines the following terms:

*"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities...*

*"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;*

During the hearing, the landlord stated that I did not have jurisdiction to hear this application at the Residential Tenancy Branch (“RTB”). I agree.

I find that this application is excluded by section 4(e) of the *Act* as it was used for vacation and travel accommodation. The tenants lived at the Campground, which was for vacation and recreational purposes only, the landlord had unrestricted access to the tenants’ site, and there was no lease or tenancy agreement signed between the parties.

For the above reasons, I find that this is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the tenants’ application. I informed the landlord of my decision verbally during the hearing. I notified the landlord that she and the tenants could pursue any claims at the Provincial Court of British Columbia or the Supreme Court of British Columbia, if they wished to do so.

#### Conclusion

I decline jurisdiction over the tenants’ application. I make no determination on the merits of the tenants’ application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent 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 *Residential Tenancy Act*.

Dated: June 28, 2019

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Residential Tenancy Branch