



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding POLSON PARK MOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNR

Introduction

This hearing was convened in response to an application by the applicant of this matter (the tenant) pursuant to the *Residential Tenancy Act* (the Act) filed December 23, 2019 to cancel a Notice to End Tenancy (the Notice) for unpaid Rent dated December 20, 2019, control the landlord's right to enter the unit, and order the landlord to comply with the Act. Both parties of this matter were represented. The applicant and the respondent's agent (the landlord) attended the hearing. Service of hearing documents was confirmed.

The tenant acknowledged they had not submitted any document evidence to this matter nor to the landlord. The landlord submitted an abundance of evidence for which the tenant denied receiving any of the evidence from the landlord. The landlord in attendance stated they gave all their evidence to another individual whom was tasked to personally give the evidence to the tenant, however was unable to prove if, how, or when respecting service of evidence. As a result, I found the landlord's document evidence to this proceeding inadmissible. Therefore, I have not considered the landlord's document evidence in making this Decision. However, both parties were given opportunity to provide their evidence orally, to be heard, to present their testimony, to make submissions, to call witnesses and to cross-examine the other.

Preliminary matters - jurisdiction

Although I heard testimony respecting the merits of this matter, the landlord was also afforded opportunity to argue their position that this matter is not within the jurisdiction of the Residential Tenancy Branch nor the Act. The parties were informed I would deliberate on the issue of jurisdiction, and which I would address in this Decision.

[references for the participants are retained as tenant and landlord].

The landlord stated that the living accommodations of this matter are within a traditional motel property and the motel unit is comprised of a bathroom and furnished bedroom area with a television, although minus a kitchen area with a cooktop or hob but includes a microwave oven, small beverage refrigerator and a coffee maker. The parties agreed the tenant signed an occupancy agreement and a guest registration card.

The landlord argued that during the winter months the motel business may offer temporary accommodation at a reduced rate, plus taxes, for multiple nights, as in this matter; however, there was never an intention to create an ongoing tenancy. The landlord asserted that the living accommodations were meant to be temporary with the motel business always intended for vacation or travel accommodation, and therefore excluded from jurisdiction under the Act pursuant to **Section 4(e)**. The tenant argued they are not occupying their unit while on vacation or while travelling. The parties agreed they entered into an agreement for occupation of the motel unit for the period of November 12 to December 10, 2019 for \$900.00, which was subsequently extended until December 20, 2019 for an additional payment. The parties agreed that the tenant told the landlord they had just been released from incarceration and provided the landlord with an address in Yellowknife on the occupant registration document. The landlord argued this was provided as the tenant's permanent address, and that occupation of the motel unit was interim or temporary. The tenant argued they were asked to provide the address as a reference. The tenant stated their intentions were to live in the unit until the end of April 2020 when they would then pursue employment cherry picking, elsewhere. They also stated they have knowledge other occupants of the residential property have been there for extended periods.

The landlord testified that the tenant's original rate of \$900.00 for 4 weeks accommodations was inclusive of taxes (16% tourist tax), however, the tenant claims they were unaware they were paying tax. The landlord testified that pursuant to the occupation agreement they retain the right to control the amount for rent as seasonal business increases. The parties agreed the tenant paid a security deposit of \$300.00, which the landlord explained was applied against the unit in the absence of a credit card.

The landlord also highlighted that the motel staff have routinely entered the motel unit to clean it, as per their agreement with the tenant, with which the tenant concurred, however stating that the landlord's staff is inside the unit, "all the time", without notice or

permission. The landlord testified they maintain their right under the occupation agreement to access the unit, and limit and control occupants.

As a result of the landlord's having knowledge respecting drug use and additional overnight occupants in the motel unit the landlord claims they exercised their right under the occupation agreement to immediately request the tenant to vacate as per the written Notice issued on December 20, 2019.

On reflection of the testimony and agreements expressed by the parties, and on the preponderance of that evidence, I find that *Residential Tenancy Policy Guideline #9 – Tenancy Agreements and Licences to Occupy* takes a reasonable stance in 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 this matter* I find the latter statement is true. I find the following suggests a tenancy agreement does not exist.

I find that payment of a security deposit in this matter, although paid was otherwise not required with presentation of a credit card, the owner retains access to the motel unit for housekeeping purposes, the periodic rate can fluctuate in accordance with the seasonal business of the motel operation, The parties completed a guest registration card in addition to an occupancy agreement, and the parties agreed that the tenant may be evicted without notice for certain breaches of the occupancy agreement. I also accept that the agreement of the parties was initially for a period of 4 weeks with the rate then adjusting to a different rate. Despite my acceptance that the tenant is not on vacation or travelling, I accept that in this matter the landlord's practices suggest their business is in the provision of temporary accommodation with policy to offer longer term occupation during winter months, as the case in this matter, and not in the business of providing ongoing tenancies.

On the preponderance of evidence, I find that while a License to Occupy clearly exists there is insufficient basis to support that a tenancy exists, therefore I must decline jurisdiction as otherwise afforded by the Residential Tenancy Act.

Analysis and Conclusion

As I have found that I have no jurisdiction in respect to this matter the application is effectively dismissed without leave to reapply. It is available for the parties to seek resolution of their dispute elsewhere.

This Decision is final and binding.

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 02, 2020

Residential Tenancy Branch