



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDB-DR, FF

### Introduction

This hearing was convened as a result of the applicant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a return of his security deposit and pet damage deposit; and
- recovery of the filing fee.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated March 16, 2020, which should be read in conjunction with this decision.

The adjudicator found the submitted documentary evidence in the applicant's application did not meet the prescribed criteria for a non-participatory proceeding under the Direct Process. The adjudicator found that the written tenancy agreement submitted by the applicant was not signed by the applicant.

The adjudicator also noted that the applicant indicated the tenancy ended due to the lease terminating and the respondent converting the unit to a nightly rental. The adjudicator noted further that the tenancy agreement "includes a vacate clause which the landlord has indicated was due to the unit not being available for long term rentals".

At the participatory hearing, the applicant, the respondent and a person the respondent said was a co-manager attended.

The hearing process was explained and the participants were given an opportunity to ask questions about the hearing process.

Neither party raised any concerns about receiving the other's evidence or the applicant's application.

Thereafter the parties were provided the opportunity to present their affirmed evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters-

The applicant voiced his objection to GT being present as a party and not a witness. The applicant said he had limited interactions with GT and that only KG was the manager.

The respondent said that GT was a co-manager and had many dealings with the applicant. The respondent said that the applicant was well aware that GT was a co-manager.

I have determined that the respondent provided sufficient evidence on a balance of probabilities that GT was acting in a managerial capacity and I allowed him to participate in the hearing at the start.

Additionally, the respondent said that her legal name was KLG; therefore, I have amended her name on the Decision to reflect her request.

I also informed the parties that I would consider their evidence as to whether this dispute fell under the jurisdiction of the Act, and then proceed to take testimony on the merits of the applicant's application.

#### Issue(s) to be Decided

Does the Act apply to this dispute and do I have jurisdiction to decide this dispute?

If so, is the applicant entitled to a return of his security deposit and pet damage deposit?

Is the applicant entitled to recovery of his filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the applicants' claim and my findings around it are set out below.

#### *Jurisdiction –*

The applicant said that his occupancy of the property in question (unit) was a “short, long-term stay”. He said he believed it was not a hotel stay, but a rental agreement.

The applicant submitted that he found the rental unit as he lived in the building, saw people move out of the unit, and inquired of its availability.

In response, the respondent submitted that she fundamentally disagreed that the unit and the applicant's occupancy was a residential tenancy.

The respondent submitted that she is in the business of using the unit for vacation rentals, and advertises it exclusively on short-term stay sites, such as Airbnb and VRBO. The respondent submitted they never rent the unit for long term stays and their agreement with this applicant was confirmed in an email and acceptance of the terms. The respondent submitted a copy of the email.

The respondent submitted that though they never rent the unit for long-term stays, she made an exception in this case as a favour to help him and his daughter as he went through a divorce proceeding. The respondent submitted the agreement was a short-term accommodation, as the unit had already been reserved for late November for American vacation visitors for the US Thanksgiving. Additionally, the stay in the unit was to be short-term, as the applicant intended on buying a property; however, that fell through and the applicant refused to vacate at the agreed upon time. The applicant said she acted as the real estate agent for the applicant and knows the reasons for the sale not being completed.

The respondent submitted that as the applicant agreed to vacate on November 27, 2019, and failed to do so, she had to cancel the reservation for the American visitors, at a cost of \$1,100.

The respondent submitted that although she signed a written tenancy agreement of the Residential Tenancy Branch (RTB) form, it was only at the applicant's request so that he could have his mail re-directed. The respondent pointed out that the applicant never signed the document and in no way was it intended to establish a tenancy.

The evidence from the respondent also was a \$500 deposit and a \$600 deposit paid by the applicant, as with any of the short-term stays, and if this was a residential tenancy, she would have collected half of the monthly rent of \$3,500 as deposits.

In rebuttal, the applicant submitted that he was under the assumption that his agreement with the respondent was for a short-term lease, under the Act.

The applicant confirmed that he asked for the written tenancy agreement to have his mail forwarded. The applicant submitted a copy of the tenancy agreement.

I note that the respondent signed only her first name to the agreement and that the applicant was required to vacate, as the unit was not available for long term rentals.

### Analysis

Before considering the merits of this Application for Dispute Resolution, I must determine whether this application falls under the jurisdiction of the Residential Tenancy Act.

Section 4 (e) of the Act states that the Act does not apply to a living accommodation occupied as vacation or travel accommodation.

In this case, I find on a balance of probabilities that a residential tenancy was never formed between the applicant and the respondent with all the rights and obligations of landlords and tenants under the Act. It was clear to me that the respondent uses this unit exclusively for vacation and travel accommodation, as shown by advertising it only on websites such as Airbnb and VRBO. The applicant did not dispute this evidence and he agreed to vacate as the unit was to be used for vacationing travelers.

Both parties agreed the written tenancy agreement in this matter was created to have the applicant's mail redirected.

I find the evidence does not show that a meeting of the minds establishing a tenancy ever occurred as the many terms under a residential tenancy agreement were never negotiated.

Rather, I find the agreement of the parties was memorialized in the respondent's email containing the terms, with the applicant's acceptance and find, on a balance of probabilities, that the agreement does not meet the criteria of a tenancy under the Residential Tenancy Act.

### Conclusion

In light of the above, I find that the living accommodation here meets the above criteria for exclusion under section 4(e) of the Act, and I therefore decline to find jurisdiction to resolve this dispute.

The applicant is at liberty to seek the appropriate legal remedy to this dispute.

I find the *Residential Tenancy Act* does not apply to this dispute and I have declined 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: April 21, 2020

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Residential Tenancy Branch