



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1078416 B.C. LTD dba ALPINE
INN EVERGREEN HOTEL GROUP
and [tenant name suppressor protect privacy]

DECISION

Dispute Codes MNDCT, FFT, RPP

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

- an order to have personal property returned pursuant to section 65;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the respondent pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The respondent acknowledged receipt of evidence submitted by the applicant. The respondent did not submit any documentation for this hearing.

Preliminary Issue – Jurisdiction

The advocate submits that although this property operates as a hotel, there is a tenancy agreement between the parties and submits that the matter falls under the jurisdiction of the Residential Tenancy Branch and that the Residential Tenancy Act applies. The advocate submits that the tenant occupied this room as his sole place of residence and was going to do so for the foreseeable future. The advocate submits that the applicant paid \$1200.00 for 28 day stays from December 18, 2019 to March 11, 2020.

The advocate submits that when the tenant attempted to pay for another 28 day stay, he was advised that the hotel was not agreeable to that and that he had to leave. The advocate submits that the police became involved and that the tenant was unlawfully evicted based on information given by the hotel management that the matter fell under the *Hotel Keepers Act*, and not the *Residential Tenancy Act*. The advocate submits that the Branch does have jurisdiction to hear this matter for the following reasons; this was the tenant's permanent residence, the length of the occupancy, that the tenant had exclusive possession of the unit, and that it was for a fixed term.

The respondent gave the following submissions. The respondent submits that the property is a hotel and is marketed, licenced and operated as such. The respondent submits that the tenant's rate for 28 days is set at a flat rate for marketing purposes but the Goods and Services Taxes is included in that amount. The respondent submits that the hotel is not obligated to charge Provincial Sales Tax for stays over 27 days. The respondent submits that the property is a hotel as housekeeping is provided including changing of linens, there is a 24 hour check in desk, and coffee and other amenities are provided to guests in the lobby.

The respondent submits there was no security deposit paid; the \$200.00 was an amount all hotels charge to a guest's credit card for incidental charges and is and was returned to the applicant at the end of his stay. The applicant paid that amount in cash as he did not have a credit card. The respondent submits that the Branch does not have jurisdiction in this matter.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the applicants claim, and my finding is set out below.

I must determine if I have jurisdiction to hear this dispute. I turn to Residential Tenancy Policy Guideline #27 which states the following:

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.

In the matter before me, I find that the applicant did not have exclusive possession of the room as housekeeping was part of the agreement allowing them access when required, to change linens and to inspect the room. In addition, the 28-day agreement was to provide discounted daily rates to guests and required both parties' agreement to commence another 28 day stay. Furthermore, the applicant has not provided sufficient evidence to illustrate that this was his primary and permanent residence.

In this case, I find that the applicant has the onus to provide evidence to support their application. Further, The Policy Guideline states that it is up to the party making an application under the Act to show that a tenancy exists.

When weighing all the evidence and testimony on this matter, I find on a balance of probabilities, this living situation is a Vacation or Travel Accommodation or Hotel. The applicant has provided insufficient evidence to establish that he is a tenant living under a tenancy agreement.

Conclusion

I decline jurisdiction to hear this matter; accordingly, this application is dismissed in its entirety 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: August 25, 2020

Residential Tenancy Branch