



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, CNC-MT, CNR, MNDCT, OLC

### Introduction and Preliminary Matters

This hearing dealt with an Application for Dispute Resolution (application) by the tenant seeking remedy under the *Residential Tenancy Act* (the Act) to cancel a 1 Month Notice to End Tenancy for Cause dated August 2, 2020 (1 Month Notice), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated August 2, 2020 (10 Day Notice), to dispute a rent increase, and for a monetary claim for compensation for damage or loss under the Act, regulation or tenancy agreement.

The tenant and an agent for the landlord TH (agent) attended the teleconference hearing. The parties were affirmed and the hearing process was explained to the parties. Words utilizing the singular shall also include the plural and vice versa where the context requires.

At the start of the hearing, the tenant testified that they vacated the rental unit since filing their application on August 11, 2020. The tenant stated that they vacated the rental unit because the landlord cut off power to the rental unit. The agent stated that they were entitled to do so as it is the position of the landlord that the Act does not apply to this living arrangement.

As a result of the above, while I find the tenant's application is now moot as the tenancy ended by the tenant's action of vacating the rental unit, I will deal with jurisdiction as it was raised by the agent during the hearing. As a result, if I determine the Act does apply, I will address whether the tenant has leave to reapply for the monetary portion of their application in this decision.

### Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

I will now determine jurisdiction and whether the Act applies to this living arrangement. There is no dispute that the tenant was occupying a room in a hotel. The agent testified that GST was not charged, which the tenant confirmed. The tenant testified that they have been a tenant since 2019 and have paid monthly rent since that time. The agent stated that each month, a new guest registration form (guest registration form) is filled out, a copy of which was submitted in evidence. The guest registration form has a GST number listed and the tenant stated that the form is simply a receipt for the monthly rent paid. The tenant stated that the hotel did attempt to charge a daily rate for rent and then reverted back to monthly rent, and that rent has been paid for the majority of the tenancy.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I find that GST was not charged since 2019, which supports that there is a tenancy between the parties, and I disagree with the agent that the Act does not apply. I find that the Act does apply as rent has primarily been paid monthly, and the tenant has been occupying the rental unit since 2019, and I find the guest registration form is nothing more than a receipt for monthly rent as GST was never charged, yet a GST number is listed. I also note that section 5 of the Act applies and states:

#### **This Act cannot be avoided**

- 5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

I find that the guest registration form was used to give the appearance that the Act does not apply; however, without charging GST, I find this living arrangement is consistent with a tenancy and that the Act does apply as a result.

As the tenant testified that the landlord cut off their power, I caution the landlord as follows:

**I CAUTION** the landlord not to breach the Act in the future by cutting off power to a rental unit.

I find the tenant failed to properly set out their monetary claim as required by section 59 of the Act, and as a result, I grant the tenant leave to reapply for any monetary compensation. The tenant is encouraged to submit a Monetary Order Worksheet when filing a claim for monetary compensation under the Act at the time the application is filed.

This decision does not impact any applicable timelines under the Act. As the filing fee was waived, I do not grant the filing fee.

### Conclusion

The tenant's application is now moot, as the tenant vacated the rental unit due to the landlord cutting off power to the rental unit, which the agent did not deny during the hearing.

The landlord is cautioned not to cut off power to any rental unit in the future. Should the landlord do so, the landlord could be issued an administrative penalty under the Act by the Compliance and Enforcement Unit (CEU). The maximum penalty for an administrative penalty under section 94.2 of the Act is \$5,000.00 per day and may be imposed for each day the contravention or failure continues.

I find the Act applies to the living arrangement before me, and as such, I grant the tenant leave to reapply for the monetary claim noted above, which did not proceed due to insufficient particulars under section 59 of the Act.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: September 28, 2020

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Residential Tenancy Branch