



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE ROCHESTER RESORT and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes DRI, CNL, OLC, PSF

Introduction

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

- an order regarding a disputed additional rent increase, pursuant to section 43;
- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62; and
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65.

The landlord's lawyer, the tenant, and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's lawyer confirmed that she had permission to represent the landlord company named in this application. The tenant confirmed that his agent was his previous co-tenant. This hearing lasted approximately 41 minutes.

The landlord's lawyer confirmed receipt of the tenant's application for dispute resolution hearing package.

Both parties confirmed that the tenant vacated the rental unit in September 2020. The tenant confirmed that he did not require the relief in this application, as all claims relate to an ongoing tenancy.

The tenant confirmed that he filed an amendment adding a monetary claim to his application. The landlord's lawyer stated that she received the amendment late on October 14, 2020, with over 100 pages of evidence, which included a monetary claim of \$38,000.00, which exceeds the RTB jurisdiction limit. The tenant claimed that he served the amendment in time for the hearing. I received the amendment on the online RTB website on October 15, 2020.

Preliminary Issue – Jurisdiction to hear Matter

The landlord's lawyer stated the following facts. The RTB does not have jurisdiction to deal with this matter, as it is not a tenancy. The landlord's motel is for snowbirds to live in the resort during the winter months and it rolls over into the summer for ordinary operations. The tenant stayed at the room from January 6 to September 24, 2020. No written tenancy agreement was signed between the parties. The tenant did not pay a security deposit to the landlord. The tenant had a guest folio and paid a daily charge of \$29.16, which was \$875.00 per 30 days, due in advance. The tenant paid a daily pet cleaning fee of \$4.16, which was \$125.00 per 30 days. The tenant had daily cleaning done by the landlord in his room. The tenant has refused entry to his room by the landlord. The tenant changed rooms at the motel, was not allowed to have unauthorized guests, and any guests had to leave everyday. The tenant's agent was not an authorized guest and was not on the same guest folio as the tenant.

The tenant stated the following facts. The RTB has jurisdiction to deal with this matter. The tenant's agent lived with the tenant in the room. The tenant filled out registration cards to live in the room, he paid \$875.00 per month without tax for rent, and a pet deposit which was a cleanup fee of \$125.00 per month. This was the tenant's main residential address and he paid for internet at the room. He paid a security deposit of \$500.00 to the landlord on January 5, 2020, when he moved in, but he does not have a receipt, he paid by cash and debit, and the landlord said it was mandatory that he paid. He lived in the room from January 5 to September 20, 2020, until he was removed by a violent attack by the landlord. He did not receive a 2 Month Notice or any other notice to end tenancy on an RTB form from the landlord. He only received a letter from the landlord, asking him to vacate. He did not prevent entry into the room by the landlord. The landlord entered his room to clean and inspect every week. He has a written tenancy agreement, but he could not find it for this hearing. The tenant was employed by the landlord as a cleaner and a security guard and he moved motel rooms because of his employment as a security guard. The tenant will pursue his monetary claim of \$38,000.00 in the Supreme Court of British Columbia.

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,

Residential Tenancy Policy Guideline 27 discusses factors to consider when determining whether the rental unit is occupied for vacation or travel accommodation or under a standard residential tenancy agreement:

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.*

I find that this rental unit was provided on a temporary basis to the tenant for vacation or travel accommodation.

I find that no tenancy agreement was signed between the parties and no security deposit was paid by the tenant to the landlord. The tenant did not provide a copy of a tenancy agreement, even though he claimed he had one. The tenant did not provide proof of paying a security deposit to the landlord, in the form of bank records, a written receipt, or any other such documents. The landlord was able to enter the tenant's room on a daily basis to clean and inspect it. No such right exists under the *Act*, as only a monthly inspection by a landlord is permitted by section 29 of the *Act*. The tenant paid a daily cleaning fee as well as a daily occupation fee. I find that the tenant did not have exclusive possession of the motel room. The tenant did not receive a notice to end tenancy on an RTB form but instead received a letter from the landlord, asking him to vacate at the end of his pay cycle, as no 30-day periods would be extended.

Further, the tenant changed motel rooms, due to his employment as a security guard with the landlord. Business and commercial tenancies are excluded by section 4(d) of the *Act*.

On a balance of probabilities and for the reasons stated above, I find that this rental unit is living accommodation occupied as vacation or travel accommodation. The *Act* specifically excludes living accommodation occupied for vacation or travel

accommodation. Accordingly, I find that I am without jurisdiction to consider the tenant's application because it is excluded by section 4(e) of the *Act*.

Finally, the tenant stated that he would pursue his monetary claim of \$38,000.00 at the Supreme Court of British Columbia. During the hearing, I notified both parties that the monetary limit of the RTB jurisdiction is \$35,000.00, so the tenant could not pursue a monetary claim in excess of this amount at the RTB. I also informed the tenant that he is not permitted to split his claims between the RTB and the Supreme Court of British Columbia.

For the above reasons, I find that this is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the tenant's application.

The tenant can pursue any claims at the Provincial Court of British Columbia or the Supreme Court of British Columbia, if the tenant wishes to do so.

Conclusion

I decline jurisdiction over the tenant's application. I make no determination on the merits of the tenant's 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: October 27, 2020

Residential Tenancy Branch