



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sand Pebbles Inn and [tenant  
name suppressed to protect privacy]

## DECISION

Dispute Codes      ERP

### Introduction

This hearing was convened in response to an application by the Tenant for an order for emergency repairs pursuant to section 32 of the *Residential Tenancy Act* (the “Act”).

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the dispute under the jurisdiction of the Act?

Is the Tenant entitled to an order for emergency repairs?

### Background and Evidence

In 2017 the Tenant occupied a room in an Inn until March 2020 when the Tenant was moved into another unit, which the Tenant continues to occupy.

The Tenant states that its originally paid a security deposit of \$500.00. The Tenant states that rent of \$1,000.00 has been and continued to be the monthly rent payable on the first day of each month. The Tenant states that it also paid a pet deposit of \$25.00 and an additional sum of \$25.00 per month for its pet. The Tenant states that when it moved to the next unit the deposits were carried over. The Tenant states that it resides full time in the unit with no other residency. The Tenant states that it also spends some

time at a home of a family member. The Tenant states that no other person has occupation and possession of the home. The Tenant provides a copy of a hotel print out indicating a room deposit of \$525.00.

The Landlord argues that the relationship between the Parties is not that of a landlord and tenant, that the nature of the business is a hotel, that this is not a tenancy under the Act, and that the Tenant is only a customer of the hotel. The Landlord states that it has no record of a deposit. The Landlord states that the Tenant pays the rent by debit or charge card. The Landlord states that the rent payable is based on a daily rate and that since May 2019 the Tenant pays the rent sporadically on a monthly or bi-monthly basis. The Landlord states that the occupation of the room started with the previous manager of the hotel. The Landlord states that the Tenant has been a guest only since September 27, 2019. The Landlord states that it has been trying to have the Tenant move out of the unit, but the Tenant has refused. The Landlord states that it has not taken any action to remove the Tenant. The Landlord states that when the police were called, they informed the Tenant that it should contact the Residential Tenancy Branch about the dispute. The Landlord states that the Landlord has access to the unit for housekeeping purposes and the Tenant is not able to refuse this access. The Landlord states that the Tenant can only change the dates or times of the housekeeping access but cannot refuse such access. The Landlord states that it has the right to change the locks to the unit at any time.

The Parties agree that the Landlord did disconnect the electricity to the unit leaving the Tenant without lights or heat. The Tenant states that this occurred on October 9, 2020 and was not returned until about a week later. The Tenant states that although the electricity is back on and while the fridge now operates, the stove is not connected to the electricity. The Tenant confirms that it made no amendment to its application to add a claim for other than emergency repairs. The Landlord argues that even though there may no longer any emergency repairs required since the Act does not apply the

dispute over emergency repairs cannot be determined under the Act. The Landlord provides a lengthy submission on why it is not under the jurisdiction of the Act.

### Analysis

Section 62(4)(a) of the Act provides that an application for dispute resolution may be dismissed if there are no reasonable grounds for the application or part. Section 33(1) of the Act defines emergency repairs as repairs that are

- (a)urgent,
- (b)necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c)made for the purpose of repairing
  - (i)major leaks in pipes or the roof,
  - (ii)damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii)the primary heating system,
  - (iv)damaged or defective locks that give access to a rental unit,
  - (v)the electrical systems, or
  - (vi)in prescribed circumstances, a rental unit or residential property.

Section 4 of the Act provides that the Act does not apply to living accommodation occupied as vacation or travel accommodation. I note that the Act does not state that the Act does not apply to living accommodation provided as vacation or travel accommodation. Although the Tenant may be receiving housekeeping services, as entry can be determined by the Tenant and as housekeeping services are not evidence of occupation of the unit, I find on a balance of probabilities that the Tenant has exclusive occupation of the unit. It is also undisputed that the unit is the Tenant's only residence. Although the Tenant may be paying a rent based on a daily rate, given that the unit is not occupied for vacation or travel purposes, I consider that this evidence does not take away from the occupation of the unit as the Tenant's residence. Given the supported evidence of a security deposit paid at the outset of the occupation of the first unit and carried over to the occupation of the second unit, and considering that the Landlord has no record of such a payment, I find on a balance of probabilities that the

Tenant paid a security deposit and that this deposit was carried over to the second unit. For these reasons I find that the unit is not occupied for vacation or travel accommodation and that a tenancy for the unit exists under the Act. However, given the evidence of the Parties that the electricity and heat have been restored to the unit and as the Tenant did not amend the application to include repairs to the stove, I find that there is no longer any grounds for an order for emergency repairs and I dismiss the application. The Tenant remains at liberty to make an application in relation to repairs to the appliances.

### Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 18, 2020

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Residential Tenancy Branch