



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Onni Level Development (Richards)  
Corp and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RR, DRI

### Introduction

The Applicants filed their Application for Dispute Resolution (the “Application”) on December 11, 2020 seeking an order that cancels a rent increase set by the Respondent. Additionally, they applied for a reduction in rent for repairs, services or facilities agreed upon but not provided. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on January 14, 2021.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The Applicants and respondent both attended the hearing, and each was provided the opportunity to present submissions.

The Respondent confirmed they received notice of the hearing. The Applicants ensured delivery to the Respondent in person on December 20, 2020. The Applicants likewise confirmed their receipt of the Respondent’s prepared evidence. On this basis, the hearing proceeded.

### Preliminary Issue - Jurisdiction

The parties in the hearing made submissions on the proposed end to the tenancy for reasons of rent amounts still owing.

The key document involved in forming the relationship between the parties here is the Accommodation Agreement. The Applicants provided a copy of this document in their evidence.

The *Act* section 1 defines the following:

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit . . .and includes a license to occupy a rental unit

“periodic tenancy” means . . . a tenancy on a weekly, monthly or other periodic basis under a tenancy agreement that continues until it is ended in accordance with this Act

“fixed term tenancy” means a tenancy under a tenancy agreement that specifies the date on which the tenancy ends

The *Act* section 2 specifies that the *Act* applies to “tenancy agreements, rental units and other residential property”

The *Act* section 6 provides that “the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.”

The *Act* section 13 provides that a tenancy agreement must comply with the requirements set out in the Regulation. This section sets out the requirements of any tenancy agreement; this includes standard terms as set out in the Schedule within the *Regulation*.

The agreement put in place between the parties in this hearing is titled ‘Accommodation Agreement’. This in and of itself raises the question whether this is a true tenancy agreement to which the *Act* applies.

These following points as found in the Accommodation Agreement factor into my consideration of this question:

- it sets out an Arrival Date and Departure Date
- rent is set at a nightly rate (here \$105) – this is “based on a 31 night minimum stay”
- a security deposit is set at \$500 and sets out that “this deposit will hold the requested Suite and that amount will be forfeited if the Applicant decides not to take the Suite and failed to provide. . . notice of such cancellation thirty (30) days prior to the scheduled completion of the Accommodation Agreement.”

- the agreement sets out “rate changes”, and this refers to “published rents” that are subject to change without notice.

I have reviewed the terms of this Accommodation Agreement against what the *Act* defines as a tenancy agreement, being the key document that governs a landlord-tenant relationship.

The following factors weigh against my finding that a tenancy here exists:

- the term of the tenancy is set out in terms of an arrival date and a departure date – I find this is neither a fixed-term nor periodic tenancy as defined in section 1 of the *Act*
- the amount of rent is *nightly*, and the agreement sets this rate as based on the length of a minimum stay – this suggests the rate is variable and fluctuates on a regular basis
- the plain wording of the “security deposit” term shows that it is a reservation fee to hold a requested unit space – this is not money paid as security for a liability or obligation of the tenant
- the “published rents” are not set out in the agreement itself – presumably this presents the occupant with choices based on either the length of their stay, or affordability to them -- this is not a set amount of rent that is governed by the *Act* and subject to the laws surrounding rental increases.

Additionally, a clause in the 11-page copy provided by the Applicant here states: “Residents are required to complete and return an Accommodation Agreement before their stay is confirmed.” This statement appears to set the requirement for this document in the resident application process, rather than form a binding agreement between the parties that sets out their rights and obligations that are governed by the *Act*.

I find these terms included in this Accommodation Agreement make this agreement between the parties outside of the jurisdiction of the *Act*. I find it more likely than not that this living arrangement is not that of a landlord and tenant agreement. I am not satisfied that the *Act* applies here; therefore, I decline to resolve this dispute between the parties.

In sum, the provisions of the *Act* do not apply to this situation. Based on these facts and an application of the legislation, I do not have jurisdiction to hear this Application.

Conclusion

Having declined to hear this matter, I dismiss this Application for Dispute Resolution 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 *Act*.

Dated: February 10, 2021

---

Residential Tenancy Branch