



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFT, CNL, OLC, OJT**

### Introduction

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

- A determination of whether the tenancy falls under the jurisdiction of this Branch;
- Cancellation of a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents (the "landlord").

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Does this tenancy fall under the jurisdiction of the Act and this Branch?

If so, should the Notice to End Tenancy be cancelled?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Are the tenants entitled to recover their filing fee from the landlord?

## Background and Evidence

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 claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began on September 8, 2020. The rental unit is a furnished suite in a property with four separate units. Suites are available to rent on a daily, weekly or long-term basis. The agreement between the parties was that this tenancy was for a fixed period to end on May 31, 2021. A security deposit of \$600.00 was paid and is still held by the landlord. The tenants pay a monthly rent of \$1,200.00 by the first of each month. No written tenancy agreement was signed by the parties.

The landlord submits that this is vacation or travel accommodation as contemplated under section 4(e) of the *Act* and therefore the *Act* does not apply. The landlord says that during the summer season from May to October, suites are rented on a daily/weekly basis and monthly accommodations available during the winter off-season.

The parties agree that the landlord issued correspondence on December 17, 2020 stating in part:

We want to inform you that the Hotel has been sold and sadly the new owner is no longer going to operate it in the present form so they require vacant possession. As a result this is notice to vacate the suite for the end of February 2021.

The tenants take the position that this tenancy falls under the jurisdiction of the Branch and the *Act*. The tenants say that this is a long-term rental agreement, with exclusive possession of the suite which is the tenants' sole and primary residence. The tenants submitted correspondence to them from government agencies at the dispute address to support that this is their primary residence. The tenants dispute the correspondence as a valid Notice to End Tenancy under the *Act*.

## Analysis

Section 4(e) of the *Act* provides that the *Act* does not apply to living accommodations occupied as vacation or travel accommodation.

Residential Tenancy Policy Guideline 27 provides further guidance and states:

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.

Based on the totality of the evidence I find that the relationship between the parties and the nature of this accommodations is captured under the *Act*. I find the use of the rental property during other times of the year or the nature of the agreement between occupants of other suites within the building to be irrelevant to the determination of this particular relationship between the parties.

I accept that the parties entered into a fixed-term agreement allowing the tenant to occupy the rental unit for a period from September 8, 2020 to May 31, 2021. The parties agree that rent is set at a monthly rate of \$1,200.00 with rent for the month of September pro-rated. A security deposit in the amount of half the monthly rent was collected by the landlord as would be expected under a tenancy.

There is no issue that the tenants have exclusive possession of the rental suite. The landlord submits that the tenant's evidence that the rental unit is their sole and permanent address was prepared for the present hearing. While I place little weight on correspondence from government agencies addressed to the tenants at the dispute address as it is open for anyone to submit a change of address online, I do find it is some evidence of the tenants' intention to use the dispute address as their primary mailing address. I find the evidence of the policy of tenant insurance for the rental unit to be of little value as it is heavily redacted to an extent where its contents are uncertain.

I find that the nature of this tenancy conforms to the characteristics of a tenancy as contemplated under the *Act*. The parties intended the tenancy to be a for a period close

to 9-months and agreed to a monthly amount of rent. I find that the use of the rental unit during other times of years or the nature of the occupation of other units to be of little relevance in determining the nature of the relationship between the parties. I find that this is a tenancy as defined under the *Act* and this Branch has jurisdiction to make a finding on the tenants' application.

I accept the evidence of the parties that what is referred to as a Notice to End Tenancy consists of an undated letter that is not on the approved form as required under section 52 of the *Act*. I therefore find that the notice is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As the tenants were successful in their application they are entitled to recover their filing fee for this application. As this tenancy is continuing, they may satisfy their monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

### Conclusion

I find that the relationship between the parties is a tenancy that falls under the jurisdiction of the *Act* and this Branch.

I find that the Notice to End Tenancy delivered on December 17, 2020 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenants are authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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: March 23, 2021

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Residential Tenancy Branch