



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice"), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the \$100.00 cost of her Application filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Tenant and gave her an opportunity to ask questions about the hearing process.

The Landlord called into the hearing 23 minutes late, which was close to when the Tenant and I were nearly finished with the hearing. I allowed the Landlord to join the hearing, despite her late attendance, which she attributed to difficulty with her wifi connection, and then difficulty finding and/or connecting her landline telephone. I find that a reasonable person would have ensured that the telephone connection was secure well ahead of the 11:00 a.m. hearing to avoid the difficulties that arose for the Landlord.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in her Application, and the Parties

confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Jurisdiction

The Landlord raised the issue of whether I have jurisdiction to hear this matter, as she said it falls under the jurisdiction of the BC *Hotel Keepers Act*, rather than the *Residential Tenancy Act*.

The Landlord said that the residential property is a vacation rental and that the Tenant "...had the usual vacation rental contract. It was fully furnished, and we have special linens in the winter, so that people have their comforters, but they don't get the [linens] what the people use in the summer."

The Tenant said that there was no housekeeping service, that they washed the linens themselves. She said: "She thought it was the *Hotel Keepers Act*, but no, we lived there for six months and were the only ones there." The Tenant said that they did not have anywhere else to live, so this was their primary residence.

Policy Guideline #27, "Jurisdiction" states:

Vacation or Travel Accommodation and Hotel Rooms

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.

Even if a hotel room is operated pursuant to the *Hotel Keeper's Act*, the occupant is charged the hotel room tax, or the occupancy is charged a daily rate, a tenancy agreement may exist. A tenancy agreement may be written, or it may be oral.

A person occupying a room in a residential hotel may make an application for dispute resolution, without notice to any other party, requesting an interim order that the RTA applies to that living accommodation

In the hearing, the Parties agreed that the Tenant rented the space from October 1, 2020 through March 31, 2021. Further, the Tenant confirmed that her family moved out of the unit on April 1, 2021.

The Tenant confirmed that her family were the only ones living in the suite; I, therefore, find that the Tenant had exclusive possession of the suite. This and other evidence, such as that the Tenant did not have another residence and that they were there for six months, lead me to find that Parties intended that the unit would be used by the Tenant's family for a tenancy and not a vacation stay.

When I consider the evidence before me overall, I find it more likely than not that the Tenant was not occupying the rental unit as a vacation rental or as short-term rental space, while her ordinary, regular residence was renovated or readied, for example. I, therefore, find that the space that the Tenant paid for falls under the Act, and not the *Hotel Keeper's Act* in this particular set of circumstances.

Further, I find that as the Tenant vacated the rental unit on April 1, 2021, that her claims are no longer relevant or applicable. Accordingly, I dismiss the Tenant's claims wholly without leave to reapply.

Conclusion

I found that the unit that the Tenant and her family occupied was a residence under the Act, and not a vacation rental pursuant to the *Hotel Keepers Act*, as the Landlord maintained.

As such, I find that I have jurisdiction to consider this matter; however, as the Tenant moved out of the rental unit on April 1, 2021 – two and a half months prior to the hearing

– I find that the Tenant's claims are no longer relevant. Accordingly, I dismiss the Tenant's Application wholly, without leave to reapply.

This Decision is final and binding on the Parties, unless 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: June 07, 2021

Residential Tenancy Branch