



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Shoreline Resort
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

This hearing was convened to deal with the applicant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The applicant and the respondent agents (agent) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing.

The respondent confirmed receiving the applicant's evidence. No evidence was submitted by the respondents.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

In filing this application for dispute resolution, the applicant requested the following:

“I hereby make an application for dispute resolution, requesting an interim order that the RTA applies to my living accommodation at the (*hotel name redacted for privacy reasons*). I strongly believe my Monthly Rental Agreement and its application thereof would satisfy the factors to determine a tenancy agreement under RTA jurisdiction and not the Hotel Keeper's Act”.

In considering the applicant's request, under section 6(2) of the Act, a landlord or a tenant may make an application for dispute resolution if the parties cannot resolve a dispute referred to in section 58(1) of the Act. Section 58(1) of the Act provides:

Determining disputes

51 (1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to
 - (A) the tenant's use, occupation or maintenance of the manufactured home site, or
 - (B) the use of common areas or services or facilities.

[My emphasis underlined]

In this case, the applicant has not identified a dispute with the respondent and confirmed they only wanted the interim order.

The applicant cites Tenancy Policy Guideline 27 as authority to file only for an interim order finding the Act applies to her living accommodation. That Guideline is in relation to section 59(6) of the Act, which allows an individual 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 this Act applies to that living accommodation.

I find a reasonable interpretation of the Act is that the request for an interim order is in relation to a preliminary issue within the context of an application for dispute resolution identifying an actual dispute. I find that is the reason the occupant of the residential hotel may request an interim order without notice to the other party. Otherwise, under the Act and Rules, the other party is entitled to know the claim, or dispute, against them, to ensure procedural fairness.

The applicant acknowledged that they had not set out an actual dispute in the application for dispute resolution.

After consideration of the evidence before me and the requirements of the Act, I find that I do not have the authority to issue an interim order in the absence of an actual dispute that requires resolution. Section 59(2) of the Act provides that an application for dispute resolution must include the full particulars as to the dispute that is to be the subject of the dispute resolution proceeding.

In light of all of the above, I find the applicant has not sufficiently set out a dispute and I decline to accept the application for dispute resolution pursuant to section 59(5)(a) of the Act, which provides:

- (5)The director may refuse to accept an application for dispute resolution if
 - (a) in the director's opinion, the application does not disclose a dispute that may be determined under this Part,.

Having declined to accept the application for dispute resolution for the reasons listed, the applicant may reapply should the applicant have a dispute with the respondent that requires resolution and the applicant remains of the position that the Act applies.

Conclusion

The application for dispute resolution did not sufficiently set out a dispute to resolve and I declined to accept the application for dispute resolution.

The applicant is at liberty to reapply, should an actual dispute arise between the applicant and respondent, and within that application, the tenant may request an interim order, without notice to the other party.

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: November 10, 2021

Residential Tenancy Branch