



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cozyside Whistler Signature  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **MNDCT, FFT**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended the teleconference hearing. The tenant had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

### *Landlord: Attendance and Service*

The landlord did not attend the hearing. I kept the teleconference line open for 14 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord was provided.

The tenant testified he served the landlord by email with the Notice of Hearing and Application for Dispute Resolution pursuant to an Order for Substituted Service granted on January 27, 2022. The Order stated the tenant may serve the landlord with the documents and a copy of the Order by email within three days and the documents are deemed served three days after that date.

Further to the tenant's testimony, I find the landlord served the documents effective February 3, 2022.

### *Preliminary Issue: Jurisdiction*

The tenant testified as follows. He lives in a country outside Canada. He rented accommodations in BC using a primary hotel booking website in October 2021 for a 3-day period starting December 26, 2021. Upon arrival, after an uncomfortable delay, the tenant and his son were granted access from the named landlord.

Upon entry, the tenant found the unit did not resemble the photograph of the unit on the primary booking website. As well, there was no hot water. The tenant left, informed the landlord of the unacceptable situation and cancelled the contract. The tenant was denied a full refund and seeks \$2,206.16 in compensation for the charges.

As the *Act* does not apply to "travel and vacation accommodation", the issue of jurisdiction is considered.

### *Analysis*

Section 2(1) of the *Act* states that the *Act* applies to tenancy agreements, rental units and other residential property, as follows:

#### **What this Act applies to**

2 (1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.

Section 1 defines "tenancy" and "tenancy agreement":

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 4(e) of the *Act* states as follows:

This Act does not apply to living accommodation occupied as vacation or travel accommodation.

*Residential Tenancy Policy Guideline #19 – Assignment and Sublet* provides guidance on the issue of jurisdiction:

The Residential Tenancy Act does not apply to living accommodation occupied as vacation or travel accommodation. If a property owner or their agent rents out their unit or property as a vacation or travel accommodation, they have no recourse through the Residential Tenancy Branch for relief under the Act.

This issue is expanded upon by *Policy Guideline #27 – Jurisdiction*:

The Act 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.

In this case, the unit was rented for 3 days only and was not the permanent resident of the tenant.

After having carefully considered the evidence and following a review of the appropriate legislation and the applicable *Policy Guidelines*, I find I have no jurisdiction to consider the tenant's application. I find the property was not rented as residential tenancy as occupied by the tenant and as contemplated by sections 1 and 2 of the *Act*.

### Conclusion

As I do not have jurisdiction to hear this application, the matter is dismissed 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 *Residential Tenancy Act*.

Dated: August 26, 2022

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Residential Tenancy Branch