



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASHCROFT MOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant August 24, 2022 (the “Application”). The Tenant applied for an order that the Landlord comply with the *Residential Tenancy Act* (the “Act”), *Residential Tenancy Regulation* (the “Regulation”) and/or the tenancy agreement.

The Application states:

Tenant wants a with-notice decision on jurisdiction under the Act. Tenant has also received handwritten note from the landlord saying they are being evicted for renovations.

I find the Tenant is applying pursuant to section 59(6) of the *Act* which states:

(6) 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.

The Tenant appeared at the hearing with K.T. and J.K., legal advocates. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence.

J.K. testified that the documentary evidence of service submitted is correct and the hearing package and Tenant's evidence were sent to the Landlord by registered mail September 13 and 20, 2022. J.K. testified that the hearing package and evidence were sent to the Landlord's address on the Land Title Search for the motel. The Tenant submitted evidence showing the hearing package was delivered September 15, 2022, and the Tenant's evidence was delivered September 22, 2022.

Based on the undisputed testimony of J.K. and documentary evidence of service, I am satisfied the Landlord was served with the hearing package and Tenant's evidence in accordance with sections 88(c) and 89(1)(c) of the *Act*. Based on the documentary evidence of service, I find the Landlord received the hearing package September 15, 2022, and the Tenant's evidence September 22, 2022. Based on the evidence mentioned, I find the Tenant complied with rule 3.1 of the Rules in relation to the timing of service.

I note that section 59(6) of the *Act* does not require notice to the Landlord. However, the Tenant served the hearing package and their evidence on the Landlord in accordance with the *Act* and therefore I note this and note that the Landlord had an opportunity to submit evidence for the hearing and to attend the hearing and provide testimony and submissions.

I proceeded with the hearing in the absence of the Landlord. The Tenant, K.T. and J.K. were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issue

1. Does the *Act* apply to the parties and rental unit address?

Background and Evidence

The Tenant and J.K. provided the following testimony and submissions.

The Tenant moved into the rental unit when a previous owner owned the building. There was no written agreement completed between the Tenant and previous owner. There was a verbal tenancy agreement between the Tenant and previous owner. There is no written agreement between the Tenant and Landlord.

The Tenant and previous owner discussed that the Tenant would do a monthly rental of an apartment. The building has some apartments and some motel rooms and is advertised as such. When the Tenant first moved into the building in March of 2019, they stayed in a motel room while the rental unit, an apartment, was being prepared. The Tenant moved into the apartment in April of 2019, and has been living there continuously since. The apartment has a full kitchen, full bathroom, living room and bedroom.

The rental unit is the Tenant's permanent residence. The Tenant uses the rental unit address as their mailing address and on important documents. The Tenant does not have another residence. The Tenant is not using the rental unit for vacation or travel purposes.

The Tenant pays \$650.00 in rent per month by the first day of each month. The Tenant paid a \$325.00 security deposit. The Tenant pays their own hydro and electricity and has an account with BC Hydro for this. The Tenant pays BC Hydro directly.

The Tenant has exclusive possession of the rental unit. The Landlord does not provide services such as cleaning services to the Tenant. It was never understood that the landlord would come into the rental unit and clean it. It was the Tenant's understanding that the landlord could not simply come into the rental unit when they wished, and that the landlord would ask the Tenant to make an appointment for the landlord to enter the rental unit. The previous owner never entered the rental unit.

There were no restrictions on the Tenant having guests or guest fees when the previous owner owned the building.

There are approximately 20 other people living in the apartment side of the building and paying rent monthly. Some of these people have lived in their units as long as the Tenant has been there.

J.K. relied on section 4 of the *Act* and RTB Policy Guideline 27 for their position that the *Act* applies to the parties.

The Tenant submitted documentary evidence which supports the testimony of the Tenant and J.K.

Analysis

Section 4 of the *Act* sets out situations where the *Act* does not apply including when the living accommodation is occupied for vacation or travel purposes.

RTB Policy Guideline 27 addresses jurisdiction and states at page four:

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

I accept the undisputed facts as outlined by the Tenant and J.K. Based on the testimony of the Tenant and J.K., as well as the documentary evidence, I find all of the facts point to there being a tenancy agreement covered by the *Act* between the parties. I note that I find there was a verbal tenancy agreement covered by the *Act* between the Tenant and previous owner. When the Landlord purchased the building, the verbal tenancy agreement between the Tenant and previous owner simply continued. There was no need for there to be a further agreement between the Tenant and Landlord because the existing verbal tenancy agreement continued.

I find the *Act* applies to the parties and the parties are required to comply with the *Act*, *Regulation* and verbal tenancy agreement which has been in existence since April of 2019.

Conclusion

The *Act* applies to the parties and the parties are required to comply with the *Act*, *Regulation* and verbal tenancy agreement which has been in existence since April of 2019.

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: October 12, 2022

Residential Tenancy Branch