



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BEST WESTERN PLUS VANCOUVER
AIRPORT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, OLC

Introduction

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

- an order regarding a disputed rent increase of \$8,706.96, pursuant to section 43;
- an order requiring the respondent to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62.

The two applicants, applicant RRH ("applicant") and "applicant AMA," the applicants' advocate, the respondent's agent, and the respondent's lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 48 minutes.

This hearing began at 9:30 a.m. with me, the applicant, the applicants' advocate, and the respondent's lawyer present. The respondent's lawyer disconnected from the hearing from 9:34 a.m. to 9:36 a.m. Applicant AMA called in late at 9:36 a.m. The respondent's agent called in late at 9:38 a.m. The respondent's general manager called in late at 9:44 a.m. and immediately disconnected, as the respondent's agent said his testimony was not required. This hearing ended at 10:18 a.m.

All hearing participants confirmed their names and spelling. The applicant and the respondent's lawyer both provided their email addresses for me to send copies of this decision to both parties after the hearing.

The respondent's agent stated that he had permission to represent the respondent company ("respondent") named in this application. He confirmed that the respondent owns the property ("hotel") that is the subject of this application. He provided the hotel address. He said that the respondent's lawyer had permission to represent him and the

respondent at this hearing. He identified the respondent's lawyer as the primary speaker for the respondent at this hearing.

Both applicants stated that their advocate had permission to represent them at this hearing and identified her as their primary speaker.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests.

The respondent's lawyer confirmed receipt of the applicants' application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the respondent was duly served with the applicants' application.

The respondent's lawyer stated that the applicants were served with the respondent's evidence package on October 30, 2022, by way of leaving a copy at the front desk of the hotel. He claimed that the applicants were not notified that the package was left there or to pick it up. He said that this was the address provided by the applicants in their application. The applicants' advocate claimed that the applicants did not receive the respondent's evidence.

I did not consider the respondent's evidence at the hearing or in this decision. I find that it was not properly served to the applicants, as per section 88 of the *Act*. The applicants did not receive the written evidence, nor were they notified to pick it up, by the respondent.

At the end of this hearing, the applicant stated that the applicants vacated the hotel on July 2, 2022. I informed the applicants that they applied for an order to comply with the *Act*, *Regulation*, or tenancy agreement, which relates to an ongoing tenancy only, so this claim is moot.

Issue to be Decided

Does the RTB have jurisdiction, pursuant to the *Act*, to decide this application?

Background and Evidence

While I have turned my mind to the applicants' documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the jurisdiction claim and my findings are set out below.

I asked both parties to make submissions regarding jurisdiction at the outset of this hearing.

The respondent's lawyer stated the following facts. The RTB does not have jurisdiction to deal with this application, as the *Act* does not apply. This is a hotel. These are not "tenants" under the *Act*, so the applicants are in the wrong forum. This is a civil dispute. The applicants failed to obtain an order under section 59(6) of the *Act* first, and did not ask for leave to do so, indicating that the *Act* applies. These are individuals who occupied a room in a hotel, and they could have made an application asking for an interim order that the *Act* applies but they did not do so. This application should be dismissed.

The applicants' advocate stated the following facts. The RTB has jurisdiction to deal with this application. Vacation and travel accommodation is not covered by the *Act*. However, the applicants stayed at the hotel for more than 30 days, so it is a tenancy, and the *Act* applies. The 30-day rule is not contained in the *Act* but the applicants' advocate was given this information from the renters inquiry line at the local tenants union.

Both parties agreed to the following facts. No written tenancy agreement was signed by the parties. There are no documents indicating that this was a fixed term for a defined period of time. The applicants were charged a daily room rate to stay at the hotel. The applicants pay the respondent on a weekly basis. These payments are not referred to as rent. There are no written documents indicating that there is a tenancy. The occupants stayed in multiple rooms throughout their stay at the hotel. Housekeeping and maintenance services were allowed to enter the applicants' rooms to provide cleaning and maintenance services. These hotel employees have key-card access to the applicants' room. The applicants did not have exclusive possession of their hotel rooms.

The respondent's agent stated the following facts. The tenants did not pay a security deposit for this tenancy. All hotel guests pay preauthorized deposits, which are not paid

in cash. This deposit would have fallen off the applicants' account, so that is probably why they do not have any proof of paying it. These deposits are customary in the hotel and lodging industry for damages to the room and for room service charges. There was no intention on the respondent's part for this to be a tenancy. The applicants were guests of the hotel.

The applicants' advocate stated the following facts. The applicants did not provide proof of paying a \$240.00 security deposit, but they were charged one. The applicants were provided with a written letter and order, dated February 23, 2022, from the border services agency in Canada, telling them to stay at the respondent's hotel. The applicants were not allowed to disclose the letter, as per the government, until they received an official decision regarding their immigration status. They had an immigration hearing on September 23, 2022, and they received a written decision on November 2, 2022, regarding their immigration status. It was past the RTB deadline to submit a copy of the above letter on November 2, 2022. The applicants' advocate was helping with the applicants with their immigration status.

The applicant stated the following facts. The applicants were evicted from the hotel on July 2, 2022. They filed this application on June 24, 2022. They have found a permanent residence now. They have no intention of returning to the hotel.

Analysis

Section 4(e) of the *Act*, outlines a tenancy in which the *Act* does not apply:

- 4 This Act does not apply to...*
(e) living accommodation occupied as vacation or travel accommodation,

Residential Tenancy Policy Guideline 27 states the following, in part:

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.*

The following sections of the *Act* state, in part:

Definitions

1 In this Act:

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following...

"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;

Enforcing rights and obligations of landlords and tenants

6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes]...

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;*
- (b) the correct legal names of the landlord and tenant;*
- (c) the address of the rental unit;*
- (d) the date the tenancy agreement is entered into;*
- (e) the address for service and telephone number of the landlord or the landlord's agent;*
- (f) the agreed terms in respect of the following:*
 - (i) the date on which the tenancy starts;*
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;*
 - (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;*

(iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;

(iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;

(v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;

(vi) which services and facilities are included in the rent;

(vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

I find that the rooms at the respondent's hotel were provided on a temporary basis to the applicants and were living accommodation occupied as vacation or travel accommodation.

While the applicants resided at the hotel from February 23, 2022 to July 2, 2022, and it may have been their primary residence at that time, I find that it was not their permanent residence. I find that it was a temporary residence, until they moved to a permanent residence, where they currently reside. Although they did not provide written proof of the letter from the border agency asking them to stay at the hotel, even as late evidence to be considered pursuant to Rule 3.17 of the RTB *Rules*, I accept the affirmed testimony of the applicant, that the applicants were directed to stay at the hotel. However, I find that the applicants did not intend to live at the hotel permanently, and it was a temporary residence since they arrived from another location and while their immigration matters were being decided.

It is undisputed that the applicants changed hotel rooms throughout the dispute period in question. In fact, the applicants did not identify any hotel room number(s) in this application or at this hearing, that is the subject of their claims. They simply indicated "hotel room" and the hotel street address in their application.

It is undisputed that there is no tenancy agreement or other written documentation signed between the parties, indicating that this is a tenancy or that it is for a fixed or defined length of time.

I find that no "rent" payments were made by the applicants to the respondent. The applicants only provided screenshots from their cellular phones, as evidence, indicating

that they paid a daily hotel room rate to the respondent. While the applicants claimed that they paid the respondent on a weekly basis, they were still charged a daily room rate. The applicants filed this application because they alleged that the respondent changed their daily room rate amounts during their stay at the hotel. Therefore, they did not pay a defined amount of rent each day, week or month, since the daily room rate changed, according to their own evidence. In their own evidence, the applicants claimed that they asked the respondent to charge them on a weekly or monthly basis, and the respondent refused, insisting on a daily payment. The applicants stated the following in their application to dispute a rent increase:

I moved to Canada on Feb 23, 2022 and into the hotel the same day, our room from the beginning was for 2 people, at the cost of \$99/night + 16% taxes. I asked the landlord to charge me weekly or monthly rate, they refuse to do it & continue to insist on daily payment. On April 10, 2022, my partner moved to Canada & moved in with me. The hotel didn't charge anything for an additional tenant. Starting on April 22, 2022, they have been charging me more, varying from an additional \$40-\$201/day.

I find that no security deposit was paid by the applicants to the respondent. The applicants claimed that they paid one, but did not provide documentary proof of same, including bank records, a credit card statement, a written receipt, or other such documents. I accept the affirmed, undisputed testimony of the respondent's agent that a pre-authorized deposit was charged by the hotel, no cash was paid, and the deposit is customary in the hotel and lodging industry for damages to hotel rooms and room service charges.

I find that the required elements of a written tenancy agreement, as per section 13 of the *Act* above, were not established between the parties. The applicants did not provide sufficient documentary evidence indicating that the parties were referred to as "landlord" or tenant," the address for service of the landlord or tenant, the date the tenancy started, the term or length of the tenancy, the amount of rent to be paid and when, the amount of the security deposit to be paid and when, the services or facilities included in the rent, or other such information.

It is undisputed that the management, cleaning, and maintenance employees employed by the respondent were able to enter the applicants' rooms at will and on a daily basis, to clean and maintain the hotel rooms. No such right exists under the *Act*, as only a monthly inspection by a landlord is permitted by section 29 of the *Act* and at least 24 hours' written notice must be provided by the landlord, prior to entering a tenants' rental

unit. It is undisputed that the applicants did not have exclusive possession of the hotel rooms.

The applicants did not provide any written RTB approved forms, including a standard tenancy agreement or a notice to end tenancy, asking them to vacate the hotel.

On a balance of probabilities and for the reasons stated above, I find that the hotel rooms at the respondent's hotel are living accommodation occupied as vacation or travel accommodation. The *Act* specifically excludes living accommodation occupied for vacation or travel accommodation. Accordingly, I find that I am without jurisdiction to consider the applicants' application because it is excluded by section 4(e) of the *Act*.

For the above reasons, I find that this is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the applicants' application.

Conclusion

I decline jurisdiction over the applicants' application. I make no determination on the merits of the applicants' application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

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, 2022

Residential Tenancy Branch