



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN NATIONAL RELOCATION
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicants April 04, 2022 (the “Application”). The Applicants applied as follows:

- For compensation for monetary loss or other money owed
- For return of the security deposit
- To recover the filing fee

C.K. appeared at the hearing for the Applicants. Nobody appeared at the hearing for the Respondent.

Jurisdiction

At the outset of the hearing, C.K. advised that the Applicants came to the city noted on the front page of this decision for vacation and rented the unit for vacation purposes.

I advised C.K. that the *Residential Tenancy Act* (the “Act”) does not apply to vacation or travel accommodation. C.K. submitted that the Act does apply because the Applicants signed a residential tenancy agreement. A copy of the residential tenancy agreement was submitted.

Section 4 of the *Act* states:

4 This Act does not apply to...

(e) living accommodation occupied as vacation or travel accommodation...

RTB Policy Guideline 27 about jurisdiction states (pages 6 and 7):

b. 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 the accommodation is rented under a tenancy agreement, the RTA applies. For instance, the RTA would likely apply to a winter chalet rented for a fixed term of 6 months.

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 Keepers Act, the occupant is charged the hotel room tax, or the occupant is charged a daily rate, a tenancy agreement under the RTA may exist. A tenancy agreement may be written or 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.

The Applicants clearly rented the unit for vacation and travel purposes because C.K. stated this. C.K. attempted to backtrack from this position after being told the *Act* does not apply; however, I do not accept that the unit was rented for anything other than vacation and travel purposes given C.K.'s original testimony on this point.

I acknowledge the parties signed a residential tenancy agreement. I note that the “tenancy” was from July 09, 2021, to July 31, 2021, three weeks. I also note that term 10 of the addendum outlines the amount owing as 23 nights x \$348 CAD = \$8,000.00. I note that these factors support that this was a vacation rental.

I do not find the fact that the parties signed a residential tenancy agreement to change the nature of the relationship or purpose of the stay at the unit. It is very clear from the testimony of C.K. that the Applicants rented the unit for vacation purposes.

It is the nature of the relationship between the parties and purpose of the stay that determines whether the *Act* applies. For example, a hotel room, which is usually used for vacation, falls under the *Act* if it is used as a person’s permanent residence. It is not the nature of the unit that determines whether it falls under the *Act*. The same is true here, it is the purpose of the stay that determines whether it falls under the *Act*. Here, the purpose of the stay was vacation and therefore the *Act* does not apply. Signing a residential tenancy agreement does not change the purpose of the stay. Parties cannot opt into the *Act* by signing a residential tenancy agreement. If the purpose of the stay is for vacation or travel, the *Act* does not apply.

I acknowledge that RTB Policy Guideline 27 states, “if the accommodation is rented under a tenancy agreement, the RTA applies.” However, this needs to be read in conjunction with the sentence that comes before it, “The RTA does not apply to vacation or travel accommodation being used for vacation or travel purposes” and the sentence that comes after it, “**For instance**, the RTA would likely apply to a winter chalet rented for a fixed term of 6 months.” What the policy guideline is saying is that if a unit usually rented out for vacation or travel purposes is rented to someone as their living accommodation, the *Act* applies. Again, it is the purpose of the stay that determines whether the *Act* applies.

Here, C.K. was clear that the purpose of the Applicants’ stay at the unit was for vacation purposes, up until I told C.K. that the *Act* does not apply. I find the Applicants rented the unit for three weeks for vacation purposes and therefore, pursuant to section 4 of the *Act*, the *Act* does not apply and the RTB does not have jurisdiction to hear or decide this matter.

Given the above, the Application is dismissed without leave to re-apply.

As told to C.K. during the hearing, it may be that the Applicants can resolve this matter through the BC Civil Resolution Tribunal, which is a separate body from the RTB.

Conclusion

The Application is dismissed without leave to re-apply.

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: December 09, 2022

Residential Tenancy Branch