



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, DRI, FF, LRE, O, OLC

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order that the landlord allow access to the unit
- b. An order disputing a rent increase that does not comply with the Regulations
- c. An order to suspend or set conditions on the landlord's right to enter the rental unit.
- d. An order that the landlord comply with the Act, regulations and/or tenancy agreement.
- e. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondents. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the respondents by mailing on July 31, 2016, by registered mail to where the respondent carries on business. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the Residential Tenancy Act applies to this relationship and whether the Residential Tenancy Branch has jurisdiction?

Background and Evidence

The tenant gave the following testimony:

- She rented a room in the rental property commencing December 13, 2015.
- She was charged rent on a daily basis plus taxes that amounted to 15% (including GST, PST and a local tax).
- The rent was originally \$60 plus tax per day. In July it was raised to \$69.95 per day plus 15% taxes.
- The applicant was not asked nor did she pay a security deposit.

- The rental property is a motel that houses between 20 and 25 units. Two of the units were rented on a monthly basis. However, the management forced one of those two renters to leave the rental unit.
- She has not signed a tenancy agreement.
- The respondent has failed to follow the Residential Tenancy Act. He has made numerous attempts to evict her without following proper procedures. The respondent failed to show compassion and has violated the applicant's human rights.
- The duration of the tenancy exceeds one month and therefore falls under the jurisdiction of the Residential Tenancy Branch.
- The landlord acted unlawfully in attempting to end the tenancy.
- The tenant intends to vacate the rental unit in the next couple of weeks.

Analysis:

Section 2 of the Residential Tenancy Act provides 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 of the Act includes the following definition

"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;

Policy Guideline 29 includes the following:

b. Hotel Tenants

Occupancy of a hotel is a license and if occupied pursuant to a tenancy agreement, the *Residential Tenancy Act* assumes jurisdiction and confers power upon the RTB over certain hotels and hotel tenants. The RTB will therefore hear the dispute if the tenant is a hotel tenant under a tenancy agreement.

Analysis

It is difficult to make a decision on the facts of this case as the applicant failed to present any documentary evidence including receipts she may have received and the respondent failed to attend the hearing. However, based on the evidence presented at the hearing I determined this is not a Residential Tenancy matter and that the Residential Tenancy Branch does not have jurisdiction for the following reasons:

- The room that is rented is part of a motel complex. The applicant acknowledges that all but two of the rooms are rented on a daily basis and there is no tenancy.
- The room rent was charged on a daily basis and included taxes.
- The applicant did not pay a security deposit.
- I determined the relationship between the parties was a license to occupy. In certain situations the occupancy of a hotel can confer the power of the RTB. However, the existence of an oral or written tenancy agreement is a necessary prerequisite. The parties have not entered into a written tenancy agreement. There is insufficient evidence to conclude that an oral tenancy agreement exists between the parties.
- The fact the tenant has lived in the room for over 9 months does not create a tenancy especially where the respondents continues to act on the basis that the applicant is a guest in his motel.

As a result I determined the Residential Tenancy Act does not apply and I do not have jurisdiction. I declined to hear the matter for lack of 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: September 26, 2016

Residential Tenancy Branch