



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

MNDC, FF

### Introduction

This hearing was scheduled in response to an Application for Dispute Resolution, in which the Applicant is seeking a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. Neither party raised any preliminary issues regarding service of documents or other administrative matters.

### Preliminary Issue

Before considering the merits of this Application for Dispute Resolution I must determine whether I have jurisdiction in this matter.

The Applicant declared that in October of 2008, his home was flooded and that his insurance company arranged to have his family live in these residential units until this damage to his home had been repaired. The Applicant declared that a representative of the insurance company was responsible for securing accommodations for his family and for making the initial reservations.

A "Fixed Term Booking Confirmation Request" for unit #3202 was submitted in evidence. This form indicates that the Applicant and/or his guests were to occupy this unit from January 09, 2009 until February 08, 2009. The Applicant and the Respondent agreed that the Applicant's insurance company would be paying a daily rate of \$100.00 for the period of this occupancy.

A "Fixed Term Booking Confirmation Request" for unit #2214 was submitted in evidence. This form indicates that the Applicant and/or his guests were to occupy the unit from January 09, 2009 until February 08, 2009. The Applicant and the Respondent agreed that the Applicant's insurance company would be paying a daily rate of \$175.00 for the period of this occupancy.

The Applicant and the Respondent agree that both units were occupied by the Applicant and his guests from January 09, 2009 until April 06, 2009. At the hearing the Respondent declared that occupants in this residential complex can request an



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extension of their stay with same day notice. The Applicant stated that he does not know the regulations regarding extensions, as these matters were addressed by his insurance company. He acknowledged that the insurance company extended the duration of his occupancy by fifty-seven days.

The Applicant and the Respondent agree that a security deposit was not paid in relation to these units, however the parties agree that the male Applicant provided a credit card number to an agent for the Respondent on the first day they occupied the rental unit. At that time the Applicant also signed a "Registration Card" in which the male Applicant agreed to accept responsibility for charges for "damages or missing items". The "Registration Card" also clearly stipulates that "check in time" is 4:00 p.m. and "check out time" is 11:00 a.m.

The Applicant and the Respondent agree that a "pet cleaning fee" of \$150.00 was paid by the insurance company. Documents submitted by the Respondent show that this fee was charged at the beginning of the occupancy.

At the hearing the Respondent declared that occupants can cancel a room reservation with seven days notice. The Applicant stated that he has no knowledge of the cancellation policy, as those matters were addressed by his insurance company.

The Respondent contends that it is the tenant of the subject property, as they rent it from the owner, and that they then issue licenses to occupy the rental unit to individuals on a daily basis. The Respondent contends that the Applicant is a licensee/guest of the Respondent. It is their position that the parties did not enter into a tenancy agreement and that the *Act*, therefore, does not apply.

The Applicant contends that the *Act* does apply, as the definition of a tenancy agreement contained in the *Act* includes a "licence to occupy".

The Applicant referred to the *Addiscombe* case, which was reportedly cited with approval in Canada in *Maple Leaf Services*, where Justice Jenkins noted that: "*the fact of exclusive possession, if not decisive against the view that there is mere licence, as distinct from tenancy, is at all events a consideration of the first importance*".

The Applicant also provided an excerpt from a publication in the Canadian Encyclopaedia Digest (3<sup>rd</sup> edition, volume 21, title 83), in which E. Portman et al wrote: "*If there is exclusive possession for a term and rent is paid, there is a presumption that parties have entered into a tenancy agreement*".

## Analysis of the Issue of Jurisdiction

The *Residential Tenancy Act (Act)* applies to tenancy agreements, rental units and other residential property.

The Act defines a tenancy agreement as “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”.

The Residential Tenancy Policy Guidelines defines a “tenant”, in part, as a person who has signed a tenancy agreement to rent residential premises. In these circumstances, the Applicant did sign a form entitled a “Registration Card” on the day they moved into this residential unit, which specifies terms and conditions relating to this occupancy.

I do not find that this “Registration Card” constitutes a tenancy agreement, as it does not include many of the standard terms of a tenancy agreement, including the address of the rental unit; the amount of rent payable; the date when rent is payable; whether this is a fixed term or a periodic tenancy; or whether there is a security deposit required. Rather, this form includes information that is more commonly associated to a stay in short-term accommodation such as a hotel or motel, as it stipulates the check-in time and the check-out time; it directs occupants to provide a current residential address; it requires occupants to abide by the terms and agreements of the License Agreement; and it requires occupants to provide a credit card number for charges incurred or liabilities that arise as a result of this occupancy.

The Residential Tenancy Policy Guidelines also stipulates that if there is no written tenancy agreement, the “tenant” is the person who made an oral agreement to rent the premises and pay the rent. I find that, in these circumstances, the Applicant made no agreement with the Respondent to rent these accommodations. Rather, the Applicant’s insurance company entered into an agreement with the Respondent in respect to occupying these accommodations.

In reaching this conclusion I was strongly influenced by the Applicant’s testimony that the insurance company located these accommodations for him; that the insurance company was paying the Respondent for the accommodations; that the insurance company arranged to extend the length of his stay at these accommodations; that the insurance company advised the Respondent of the date the Applicant would be vacating the accommodations; that the Applicant did not communicate with the Respondent in regards to the duration of his stay, the means of extending the duration of his stay, or the method of notifying the Respondent of his intent to vacate these accommodations.



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On this basis, I find that the Respondent was not a tenant in these accommodations. Rather, I find that the Respondent was a guest of the insurance company while he was occupying these accommodations.

Even if I were to find that the Respondent had entered into a tenancy agreement with the Applicant because he had a license to occupy these accommodations, I would find that I do not have jurisdiction in this matter pursuant to section 4(f) of the *Act*.

Section 4(f) of the *Act* stipulates that this Act does not apply to living accommodations provided for emergency shelter or transitional housing. In these circumstances, I find that these accommodations were provided to the Applicant by his insurance company for the purposes of emergency shelter. The evidence shows that the Applicant had been temporarily displaced from his home as the result of a flood that had rendered his home temporarily uninhabitable and that he was living in these accommodations until he could return to his home. In my view this meets the commonly understood definition of emergency shelter that is provided subsequent to a disaster, natural or otherwise.

## Conclusion

I hereby dismiss the Tenant's Application for Dispute Resolution, as his claim does not fall under the *Act*. The Tenant has the option of pursuing his claim through the Supreme Court of British Columbia.

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 25, 2009.

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Dispute Resolution Officer