



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            FFT, MNSD  
                                  FFL, MNDCL-S

### Introduction

This hearing convened as a result of cross applications. In the “Tenants’ Application for Dispute Resolution” filed on July 18, 2019, the Applicants sought return of their security deposit and recovery of the filing fee. In the “Landlords’ Application for Dispute Resolution” filed on July 25, 2019 the Respondents sought monetary compensation from the Applicants, authority to retain their security deposit and recovery of the filing fee. By amendment filed on October 1, 2019 the Respondents increased their monetary claim from \$2,650.00 to \$7,574.73.

The hearing of the parties’ respective applications was scheduled for teleconference before me at 1:30 p.m. on October 18, 2019. The Applicants were represented by B.K., who identified himself as G.K.’s uncle. The Respondents were represented by S.C., who identified as the owner of the rental property. The other named “landlord” was her property manager, M.C.

### Preliminary Matter—Jurisdiction

This dispute arose over an alleged agreement between the Applicants and the Respondents regarding renting a home in large city in British Columbia. The Applicants are university students from Ireland. The Respondent, S.C., resides in the United States of America. She testified that she is the registered property owner of the rental home.

The parties agreed that the intended tenancy was for approximately three months during the summer of 2019. While the Respondents submitted it started May 15, 2019, and the Applicants argued it was to begin June 1, 2019 both agreed it was to end by the end of August 2019.

The Applicants are four young university students who decided to spend some of the summer together in Canada. Their permanent residence remained in Ireland, and at no time did they intend to relocate to Canada except to work during the summer of 2019.

The Applicants communicated with the Respondents regarding renting a furnished home in a popular community on the West Coast of British Columbia. The Applicants provided the Respondents with a “security deposit” in the amount of \$2,250.00.

Although a “residential tenancy agreement” was drafted by the Respondents, it was incomplete, in that it did not provide the parties’ names, or an address for service for the Landlord. Further, the addendum included terms which were more akin to a short-term vacation rental rather than a residential tenancy. The written agreement was never signed by the parties. The parties also disputed whether an oral agreement was reached or not.

Less than a week after the Applicants paid the deposit and received a draft of the written agreement, they informed the Respondents they did not wish to move into the rental home.

The power and authority of the Residential Tenancy Branch is derived from the *Residential Tenancy Act*. The dispute resolution process does not create a court and as such, Arbitrators delegated under the *Act*, do not have inherent powers arising under the common law which are possessed by a judge; rather, Arbitrators must only assume jurisdiction over tenancy disputes which are governed by the *Residential Tenancy Act*.

Section 4 of the *Residential Tenancy Act* provides as follows:

**What this Act does not apply to**

**4 This Act does not apply to**

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,
- (d) living accommodation included with premises that
  - (i) are primarily occupied for business purposes, and
  - (ii) are rented under a single agreement,
- (e) living accommodation occupied as vacation or travel accommodation,**
- (f) living accommodation provided for emergency shelter or transitional housing,
- (g) living accommodation
  - (i) in a community care facility under the *Community Care and Assisted Living Act*,

- (ii) in a continuing care facility under the *Continuing Care Act*,
- (iii) in a public or private hospital under the *Hospital Act*,
- (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
- (v) in a housing based health facility that provides hospitality support services and personal health care, or
- (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,
- (h) living accommodation in a correctional institution,
- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,
- (j) tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies, or
- (k) prescribed tenancy agreements, rental units or residential property.

Section 4(e) of the *Residential Tenancy Act* definitively provides that the *Act* does not apply to vacation or travel accommodation which is being used for vacation or travel purposes.

*Residential Tenancy Branch Policy Guideline 27—Jurisdiction* provides further guidance on this issue and provides in part as follows:

#### ***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

In the case before me the parties agreed that it was their intention that the Applicants rent the home for approximately three months during the summer of 2019. The rental unit was fully furnished. The parties further agreed that the Applicants were coming to Canada on student work visas and intending to return home at the end of the summer to their primary residence in Ireland. Although they worked in Canada for the summer, they came to Canada for holiday purposes, not to relocate.

While the parties discussed a formal written residential tenancy agreement the agreement was not finalized, nor was it signed. The evidence indicates the circumstances of the living arrangement was more akin to a vacation rental than a residential tenancy.

**In all the circumstances I find that I do not have jurisdiction to consider the issues between the parties as the rental accommodation is vacation or travel accommodation, not a rental unit in a residential tenancy.**

While I am confident the parties will reach a mutual agreement regarding a resolution of the issues between them, should those discussions fail, they are to file for dispute resolution in the B.C. Provincial Court (Small Claims Division), or, (provided their claims fall within the monetary jurisdiction) with the B.C. Civil Resolutions Tribunal. In any event, the parties confirmed their addresses for service which are also provided for on the unpublished cover page of this my Decision.

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: October 18, 2019

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Residential Tenancy Branch