



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 369261 B.C. LTD. O/A Above Tide Motel and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR

Introduction

This hearing dealt with an application by the landlord for an order of possession, pursuant to section 55 of the *Residential Tenancy Act*.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented herself. The corporate landlord was represented by their agents.

As both parties were in attendance, I confirmed service of documents. The tenant confirmed receipt of the landlord's evidence and did not file any of her own. I find that the tenant was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Preliminary Issues

The corporate landlord rents a room to the tenant in a motel. The issue of jurisdiction was raised by the landlord.

Residential Tenancy Policy Guideline #27 addresses:

Vacation or Travel Accommodation and Hotel Rooms

The *Residential Tenancy Act* 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 *Residential Tenancy Act* 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.

In this case, the accommodation was rented to the tenant on a month to month basis at a monthly rent of \$1,365.00. The tenant had exclusive possession of the room and it served as the primary residence of the tenant.

Based on the above, I find that the *Residential Tenancy Act* does apply and that I have jurisdiction to hear the landlord's application.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy started on April 01, 2020. The monthly rent is \$1,365.00 due in advance on the last day of the month. On September 01, 2020, the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant did not dispute the notice or pay rent within five days of receipt of the notice to end tenancy. The tenant also agreed that as of the date of this hearing she owed rent for the months of September, October and November 2020.

The reasons for the notice and the amount owed were discussed at length. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Analysis

Pursuant to Section 63 of the *Residential Tenancy Act*, the Arbitrator may assist the parties settle their dispute and if the parties settle their dispute during the hearing, the settlement may be recorded in the form of a decision or an order.

During this hearing, the parties reached an agreement to settle their dispute on the following terms:

1. The tenant agreed to move out by 1:00 pm November 15, 2020.
2. The landlord agreed to allow the tenancy to continue until 1:00 pm November 15, 2020. An order of possession will be issued to the landlord effective this date.
3. Both parties stated that they understood and agreed that these particulars comprise the full and final settlement of all aspects of this dispute for both parties.
4. The parties agreed to exercise any additional goodwill and spirit of cooperation necessary in regard to the above undertakings, which might be required to achieve a positive end to this landlord – tenant relationship.

Pursuant to the above agreement and section 55(2) of the *Residential Tenancy Act*, I am issuing a formal order of possession effective by 1:00 pm November 15, 2020. The Order may be filed in the Supreme Court for enforcement.

The parties have reached a settled agreement, as recorded above. This agreement was reached in accordance with section 63 of the *Act*. The parties are bound by the terms of this agreement, as well as by the terms of their tenancy agreement and the *Act*. Should either party violate the terms of this settled agreement, the tenancy agreement or the *Act*, it is open to the other party to take steps under the *Act* to seek remedy.

Conclusion

I grant the landlord an order of possession effective by **1:00 pm November 15, 2020**.

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 05, 2020

Residential Tenancy Branch