



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LORD STANLEY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      OLC FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring a landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the respondent pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by its agents with EH primarily speaking (the "landlord").

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. While the tenant complained about the manner by which they were served by the landlord, the parties each testified that they received the respective materials and based on their testimonies I find each

party duly served in accordance with sections 88 and 89 of the *Act* and in any event have been sufficiently served in accordance with section 71.

### Preliminary Issue – Jurisdiction

The landlord submits that the Residential Tenancy Branch (“RTB”) does not have jurisdiction to hear this matter, as the living accommodation in question is occupied by the tenant as vacation or travel accommodation pursuant to section 4(e) of the *Act*.

The parties agree on the following facts regarding their agreement. The tenant began occupying the rental unit on December 7, 2019. The suite is a unit in a multi-unit building. The agreement provides that rent is \$70.00 nightly and the tenant pays a lump sum of \$2,100.00 every 30 days, whenever that falls in the month. A security deposit of \$1,050.00 was paid at the start of the agreement and is held by the landlord. The term of the agreement was from December 7, 2019 to May 5, 2020.

The tenancy agreement provides that the rent includes water, electricity, heat, local telephone and basic cablevision and wifi as well as furniture, carpet, window blinds, sheets & towels, cooking and dining wares. Housekeeping services occur on Saturdays with a complimentary continental breakfast available daily.

The parties agree that the tenant subsequently requested to extend the agreement until April 30, 2022. An amended rental agreement was signed by the parties indicating the new term. The tenant continued to pay rent of \$70.00 nightly every 30 days in lump sums of \$2,100.00.

The tenant says they attempted to extend their stay beyond April 30, 2022 but were refused by the landlord. The landlord issued a Mutual Agreement to End Tenancy providing an end of tenancy date of April 30, 2022. The tenant refused to sign the agreement and has continued to reside in the rental unit as at the date of the hearing, July 26, 2022.

The landlord testified that they issued their issuance of the Mutual Agreement is not indicative of whether this is a residential tenancy but simply the most expedient form they were able to find to end the tenant’s occupation of the living accommodation. The landlord submits that they have clearly indicated to the tenant that this is not a periodic tenancy, that they must vacate the rental unit and any payments received subsequent to April 30, 2022 do not instate a tenancy as contemplated under the *Act*.

Section 4(c) of the *Act* sets out living accommodations to which the *Act* does not apply. It reads in part as follows:

- 4     *This Act does not apply to...*  
      (e) *living accommodation occupied as vacation or travel accommodation,...*

Residential Tenancy Policy Guideline 27 provides guidance on factors to consider when determining whether the *Act* applies to a living arrangement. It states in part:

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.

I find that the arrangement between the parties has more of the characteristics of what one would expect from an accommodation occupied as travel or vacation accommodations. The suite is offered, furnished for a fixed period of time with the tenant paying a fixed daily rate on a periodic schedule that does not correspond to a fixed date in the month. No inspection report was prepared by the parties at the start of the occupancy and the landlord offers regular housekeeping services and a complimentary daily meal.

While I accept the undisputed evidence of the tenant that the rental suite is their primary and sole residence, I find it clear from the way the suite was advertised and the initial correspondence between the parties that it was understood that this was an extended stay vacation or travel accommodation and not intended to create a tenancy.

Under these circumstances and based on the evidence before me, I find that the *Act* does not apply to this arrangement between the parties. I therefore have no jurisdiction to render a decision in this matter.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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: July 25, 2022

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Residential Tenancy Branch