

Residential Tenancies Tribunal

[REDACTED] Decision 21-0005-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am on 22 March 2021** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as applicant1, participated in the hearing. – **Affirmed**.
3. The applicant, [REDACTED], hereafter referred to as applicant2, participated in the hearing – **Affirmed**.
4. The respondent, [REDACTED], hereafter referred to as the respondent did not participate in the hearing – **Absent and Not Represented**.
5. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicants have to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The affidavit submitted by the applicants show that the respondent was served with the notice of this hearing on the **09 February 2021** by serving the original documents by way of text message [REDACTED] and providing proof and verification of service.
7. A phone call was place to the respondent at [REDACTED] and no response.

8. During the presentation of the claim an issue of jurisdiction arose that required a decision before the continuation of the claim presentation could proceed. The following is this tribunal's decision regarding Jurisdiction.

Issues before the Tribunal

9. The tribunal is required to adjudicate on its jurisdiction to hear this claim.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. Also relevant and considered in this case are Section 3(4)(a) of *the Act*,

Issue 1: Jurisdiction

Position

12. The applicants during the presentation of their claim in this matter, indicated that they were operating an air bnb/short term rental operation outside of the air bnb platform.
13. As part of the applicant's submission, a copy of the rental agreement was reviewed in consideration of this decision. For the purpose of this decision, it will be identified as **(Exhibit L # 1)**.

Analysis

14. I have reviewed the testimony and evidence and relevant sections of the legislation respecting this matter of jurisdiction. The particular section of the legislation is quite clear in that it outlines that a landlord and a tenant relationship must exist for the *Residential Tenancies Act* to apply.
15. Section 3 outlines guidelines for the tribunal on situations where the Act will and will not apply. Section 3(4)(a) reads:

3. (1) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies where the relationship of landlord and tenant exists in respect of residential premises.

(4) This Act does not apply to

(a) living accommodation used or occupied on a transient basis provided in a hotel, motel, inn, tourist home, hostel or other similar accommodation;

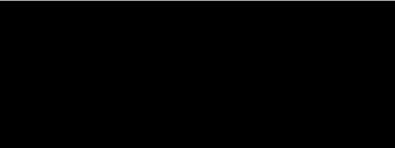
16. The rental agreement used by the applicants lends itself to the very nature of a short term operation. It is established for 2 months only and provides for the respondent to remove herself from the property as a result of a previous booking.
17. The *Residential Tenancies Act, 2018* allows for specific criteria on types of rental agreements as outlined
 - 8. (1) A landlord may enter into a rental agreement where a residential premises is rented**
 - (a) from week to week;**
 - (b) from month to month; or**
 - (c) for a fixed term of not less than 6 months.**
18. As stated, the noted agreement cannot meet the requirements for a fixed term agreement as it is less than 6 months, yet it explicitly has a beginning and end date.
19. Further, the situation in this matter does not allow for the required notice period for a fixed term agreement as outlined in section 18 of the *RTA, 2018*.
20. The requirement of the respondent in this matter to move from the dwelling because of a previous booking further leads me to place this type of rental in the short term and transient nature.
21. The operation of this short term rental business whether that be on the air bnb platform or not, is a commercial business being operate for the purpose of transient nature and not that of a residential nature. The *Residential Tenancies Act, 2018* applies only to living accommodations of a residential nature.
22. It is the position of this tribunal that the agreement is that of a commercial short term/transient transaction which is clearly not in the jurisdiction of this tribunal. I find that this tribunal does not have jurisdiction to hear this claim resulting from the lack of establishment of a landlord and tenant relationship in *Section 3(1)* of the *Residential Tenancies Act, 2018*. Parties to this claim are hereby referred to the appropriate court of jurisdiction to adjudicate this matter.

Decision

23. **The Residential Tenancies tribunal hereby relinquishes jurisdiction in this matter to the court of appropriate jurisdiction.**

07 April 2021

Date


Michael Greene
Residential Tenancies Tribunal