Employment Standards TRIBUNAL

Citation: Dinh Tien La (Re)
2018 BCEST 83

An appeal

- by -

Dinh Tien La
("Mr. La")

- of a Determination issued by -

The Director of Employment Standards

pursuant to section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

PANEL: Shafik Bhalloo

FILE NO.: 2018A/78

DATE OF DECISION: August 15, 2018

DECISION

SUBMISSIONS

Jeff Sanders counsel for Dinh Tien La

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the *"ESA"*), Dinh Tien La ("Mr. La") has filed an appeal of a Determination issued by a delegate (the "Delegate") of the Director of Employment Standards (the "Director") on May 31, 2018 (the "Determination").

2. The Determination found that Summer Hotel Ltd. ("Summer Hotel") contravened Part 3, sections 18 (wages); Part 5, section 46 (Statutory holiday pay); Part 7, section 58 (vacation pay) and Part 8, section 63 (compensation for length of service) of the *ESA* in respect of the employment of Mr. La. The Determination ordered Summer Hotel to pay Mr. La wages in the total amount of $14,182.87 inclusive of accrued interest. The Determination also levied four (4) administrative penalties against Summer Hotel totaling $2,000 for breaches of sections 17, 18 and 46 of the *ESA* and section 46 of the *Employment Standards Regulation* ("*Regulation*"). The total amount of the Determination is $16,182.87.

3. Mr. La appeals the Determination on the sole ground that the Director erred in law in making the Determination. Mr. La is seeking the Tribunal to vary the Determination.

4. On July 11, 2018, the Tribunal corresponded with the parties advising them that it had received Mr. La's appeal. In the same correspondence, the Tribunal requested the Director to produce the section 112(5) "record" (the "Record") and notified the Director and Summer Hotel that no submissions were being sought from them on the merits of the appeal at this stage.

5. The Record was provided by the Director to the Tribunal on July 17, 2018. A copy of the same was sent by the Tribunal to Mr. La and Summer Hotel on July 18, 2018. Both parties were provided an opportunity to object to its completeness. Summer Hotel did not provide any objections to the completeness of the Record and Mr. La's counsel submitted that the Record appeared complete. In the circumstances, the Tribunal accepts the Record as complete.

6. On August 3, 2018, the Tribunal informed the parties that the appeal had been assigned, that it would be reviewed and that following the review, all or part of the appeal may be dismissed under section 114(1). If all or part of the appeal is not dismissed, the Tribunal will seek submissions from Summer Hotel and the Director on the merits of the appeal.

7. I will make my decision, whether there is any reasonable prospect that the appeal will succeed, based on my review of Mr. La's submissions, the Record, and the Reasons for the Determination (the "Reasons").

ISSUE

8. The issue to be considered at this stage of the proceeding is whether the appeal should be allowed to proceed or be dismissed under section 114(1) of the *ESA*.

THE FACTS AND REASONS FOR THE DETERMINATION

9. Summer Hotel operates a 26 room rental building on East Hasting Street, in Vancouver, B.C. Eighteen of the rooms in the building are rented on a monthly basis and 7 are rented on an hourly basis.

10. According to a BC Online: Registrar of Companies - Corporation Search conducted on June 13, 2017, Summer Hotel was incorporated on December 11, 2011. Dam Bon Le ("Mr. Le") is listed as its sole director and officer.

11. On June 13, 2017, Mr. La filed a complaint against Summer Hotel alleging that he worked as a "Hotel Manager" for Summer Hotel from September 1, 2005, to May 21, 2017, and the latter contravened the *ESA* by failing to pay him regular wages, overtime wages, annual vacation pay, statutory holiday pay and compensation for length of service (the "Complaint"). He claimed that he was not paid "since October 2015" and Summer Hotel him a total of $500,000 including compensation for length of service.

12. The Delegate investigated the Complaint. In the investigation, Mr. La was represented by legal counsel. The Record shows that counsel made some written submissions and also attended a telephone conference call between the Delegate and Mr. La. The Record also shows that Summer Hotel was afforded an opportunity to participate in the investigation process. More particularly, an investigation letter, a Demand for Employer Records, and a copy of the Complaint were sent to Summer Hotel and numerous telephone calls were made to its representatives but to no avail as Summer Hotel failed to participate in the investigation and dispute resolution process.

13. In the Reasons, the Delegate notes that he considered two issues in the investigation of the Complaint, namely: (1) Was Mr. La a "Resident caretaker" under the *Regulation*? (2) Did Summer Hotel owe Mr. La any wages?

14. With respect to the first question, the Delegate summarizes the uncontested evidence of Mr. La and the written submissions of his counsel (contained in the Record) at pages 17 to 19 of the Reasons for the Determination (the "Reasons"). I will, more particularly, summarize salient evidence of Mr. La as recorded in the Reasons, and counsel's written submissions in response to the Delegate's preliminary findings in the investigation of the Complaint, below:

- In 2005, Mr. La began working at Summer Hotel in exchange for payment of $200.00 a month and a room to live in.
- He received several cheques from Summer Hotel during 2006 and one in 2007, but none after. The Reasons do not disclose what, if any payments, were made to Mr. La in 2005, the year he commenced employment with Summer Hotel.

- Summer Hotel has 26 rooms: 18 rooms are rented on a monthly basis, and 7 rooms are rented on an hourly basis.
- Mr. La's room was located next to the office which was in Room 102.
- The rooms only have one sink and one bed but no kitchen.
- In the monthly-rented rooms, tenants were allowed to cook using hot plates, but there were no kitchen facilities.
- 10 of the 18 monthly-rented rooms had long term tenants ranging from 8 to 10 years duration. The remaining 8 rooms were rented to tenants whose tenancies ranged from several months to a year.
- In 2006, it was confirmed verbally to Mr. La that he would work as a manager. It is not identified in the Reasons who confirmed this to Mr. La.
- Mr. La's duties and responsibilities entailed managing and supervising "all the jobs" on behalf of the owners.
- Mr. La ensured the security of the building, and kept notes about what was occurring at the business.
- Mr. La managed two cleaners who assisted with cleaning rooms.
- From 2005 to 2007, Mr. La directly collected money from guests of Summer Hotel, and also cleaned the rooms. However, in 2007 he did not directly collect money from guests because of safety concerns. Instead, he got two workers (who were tenants in the building) to collect the rent from the guests, and he watched security camera footage in his office to make sure that the money was collected properly. There is a box on the door to the office and the workers who collected the money put it in the box.
- Mr. La's daily routine involved sitting in the office, which had a security system with 14 cameras. Throughout the day, he kept an eye on the camera, and he also went around the building to make sure everything was secure and safe.
- Mr. La checked-in and checked-out hourly guests in the apartment building and counted cash each day which the employer collected the next morning.
- Mr. La ensured that the rooms were clean after the hourly guests left.
- Sometimes when the guests destroyed the sink or bed in a room, Mr. La had to hire repair people to fix the broken items.
- At the start of his employment in 2005, Mr. La worked from 7:00 a.m. to 2:00 a.m. every day. After 2007, his schedule changed from 7:00 a.m. to 12:00 midnight every day.
- Mr. La's employment ended when Summer Hotel terminated his employment without cause and without written working notice. His final day of employment was May 21, 2017.
- Summer Hotel posted, in the apartment building, a notice dated May 16, 2017, advising all tenants that Mr. La "is no longer in charge of payments or any phone contact."

- Counsel for Mr. La submitted, in the investigation of the Complaint, a copy of the decision of the Residential Tenancy Branch (the "RTB") made on November 9, 2017 (the "RTB Decision"). In the RTB Decision, the Arbitrator noted Mr. La's evidence that, as part of his employment with Summer Hotel, he was provided a rent-free room. The arbitrator also concluded that Summer Hotel failed to substantiate "that [it was owed] any amount of rent or utility" by Mr. La.
- In his written submissions in response to the Delegate's preliminary findings, counsel for Mr. La argued that while the scope of Mr. La's duties at Summer Hotel included duties within the definition of "Resident caretaker" under the *Regulation*, he also performed the following duties which went "beyond the definition of residential caretaker":
    i. Checking guests in and out of the seven hourly room units;
    ii. Cleaning of the hourly rooms in between guests, to ensure a clean room for the next guest;
    iii. Monitoring the CCTV security system all-day long to ensure the security of the building.
- Counsel contended that Summer Hotel operated two distinct businesses out of its premises at East Hastings Street; it rented 18 residential units on a month-to-month basis, and it rented non-residential rooms on an hourly basis. While Mr. La was a resident caretaker of the former business, he was also the "primary manager" of the latter which "likely [occupied] a majority of Mr. La's work day".
- Counsel argued that because of the multitude of duties performed by Mr. La for Summer Hotel, his employment could not be classified only as a resident caretaker; that a "strict interpretation of the language of the *Act* would fail to correspond with the reality of his employment duties".
- Counsel added that Mr. La "should not be subject to the definition of resident caretaker, or the exclusions which apply to that status"; he should not be deprived of the benefits conferred by the legislation, namely, the standard minimum wage and overtime, for all hours he worked at Summer Hotel.
- Counsel concluded his submissions stating that "the definition of resident caretaker should be interpreted narrowly so as to include workers who *only* perform tasks associated with a residential apartment building."

15. Having set out the evidence of Mr. La and the submissions of his counsel, the Delegate then delineates, in the Reasons, the definition of "resident caretaker" in section 1 of the *Regulation* and reviews the evidence in context of the said definition. In concluding that Mr. La, in all aspects of his work with Summer Hotel, was a "resident caretaker" as defined in the *Regulation,* reasons as follows:

> [Counsel] acknowledges that Mr. La's duties included those duties encompassed by the definition of resident caretaker; specifically, Summer Hotel is a building which includes more than eight residential suites and Mr. La was employed as a caretaker, custodian, manager and occasional janitor with respect to those residential suites. However, he argues Mr. La should be compensated for multiple jobs at Summer Hotel: as a resident caretaker, as a manager of its

> short-term room rental operations, and for his work securing the premises. I find that Mr. La's duties involving the short-term rental units and security duties around the building fall within the realm of being a caretaker and manager of Summer Hotel. Furthermore, the evidence provided does not reveal that the Complainant had multiple jobs with distinct terms and conditions of employment. As a result, I find that Mr. La was a "resident caretaker" of an apartment building, as defined under the Regulation, and therefore may be excluded from the hours of work and overtime requirements of the Act, but entitled to statutory holiday pay and the minimum wage dictated under the Act and Regulation for a "resident caretaker," as well as protections from excessive hours, as detailed in sections 36 and 39 of the Act.

16. Having concluded that Mr. La was a resident caretaker within the definition of the *Regulation*, the Delegate then went on to consider the second question - whether Summer Hotel owed him any wages. In concluding this question in the affirmative, the Delegate relied on the uncontested evidence of Mr. La and determined that he was owed $13,757.36 in wages plus $425.51 in interest for a total $14,182.87. I do not find it necessary to go over the evidence of Mr. La and the Delegate's calculations in the Reasons as the appeal of Mr. La challenges the Director's determination of his status as a resident caretaker. If that challenge is successful then only will the Tribunal revisit the calculation of wages.

SUBMISSIONS OF MR. LA

17. Mr. La has checked of the "error of law" ground of appeal in his Appeal Form.

18. In the accompanying written submissions with Mr. La's Appeal Form, counsel reiterates, but more fully, the arguments he advanced previously in his written submissions made on March 2, 2018, in response to the preliminary findings of the delegate. More specifically, counsel contends:

- Summer Hotel not only operates a residential building out of its premises on East Hastings Street but it also set aside seven rooms that were rented exclusively on an hourly basis for short-term use by guests.
- Mr. La does not dispute that he regularly performed duties encompassed in the definition of resident caretaker under the *Regulation* in relation to Summer Hotel's residential suites, but he also performed the functions of primary operator of the hourly-room rental business of Summer Hotel. In the latter role his duties are not "resident caretaker" duties as contemplated in the *Regulation.*
- With respect to the hourly room business, Mr. La performed numerous tasks including checking in and checking out guests, cleaning the hourly-rental rooms in between guests, and all-day monitoring of a CCTV system with fourteen cameras to ensure the security of the premises. These duties of Mr. La are "distinct from and in addition to his duties as resident caretaker" and occupied "a significant amount of his work day". The Delegate failed to consider that these duties "go above and beyond what is contemplated under the definition of resident caretaker [in] the *Act."*
- The *Interpretation Guidelines Manual British Columbia Employment Standards Act and Regulations* ("the *Guidelines*") state that the work normally associated with a resident caretaker includes, but is not limited to, the following:

- general light cleaning of the property (vacuuming hallway carpets)
- light maintenance (replacing burned out lights)
- preparing suites for rent (steam cleaning carpets, painting walls, cleaning ovens and such like heavy cleaning and light maintenance), or arranging for same
- showing suites to prospective tenants
- collecting rent from tenants
- attending to any emergencies
- watering and mowing lawn
- clearing snow
- arranging for garbage disposal
- arranging for removal of vehicles parked on property without authorization.

- The tasks listed in the *Guidelines* were intended to refer to work relating to residential units and not small rooms that do not contain kitchens that are rented by the hour. Individuals renting Summer Hotel's hourly rooms are not "tenants", as was intended by the *Guidelines.*
- Operating the Respondent's hourly-room rental business was a full time job for Mr. La, and "was in no way the type of supplementary position that is contemplated by the *Act's* definition of *resident caretaker."*
- Summer Hotel failed to post caretaker work hours and day off work or to provide Mr. La with a copy of a caretaker schedule, as required by section 35(2) of the *Regulation.* Therefore, Summer Hotel did not intend Mr. La to perform the role of resident caretaker, but instead as primary operator of its hourly-room rental business.
- In *Tana L. Gilberstad* (BC EST # D129/97, Reconsideration of BC EST # D331/96, pp. 4 – 5) the Tribunal affirmed, "an employee may well be hired to perform different job functions and, in such circumstances, is entitled to be paid at the prescribed wage rate for each separate function".
- There is nothing in the *ESA* precluding a person from being a resident caretaker for an employer while also performing duties as a regular employee for that same employer: *Nacel Properties Ltd.* (BC EST # D279/02).
- In *Nacel*, *supra*, the Tribunal reasoned:

  > As benefits conferring legislation, the *Employment Standards Act* is to be given a large and liberal interpretation. Regulatory provisions that limit or exclude an employee's entitlement to statutory benefits (such as, in this case, overtime and minimum daily pay) are to be narrowly interpreted. The burden of establishing that a person is excluded from the protection of the *Act* or any part of it, lies with the person asserting it, and there must be clear evidence justifying that conclusion (para 22).

- In this case, the Delegate erred in failing to consider that it is possible for Mr. La to be considered a resident caretaker in one capacity for Summer Hotel and also perform work as a regular employee for the Summer Hotel. Instead, the Delegate summarily concluded that "the evidence does not reveal that Mr. La had multiple jobs with distinct terms and conditions of employment." The Delegate failed to explain how he reached this conclusion, and why, despite the evidence before him, it was not possible for Mr. La to perform work as a resident caretaker and an employee at the same time.
- The Delegate's strict interpretation of the definition of resident caretaker did not consider the nature of all of the work performed by Mr. La. Mr. La performed two distinct roles: as resident caretaker of Summer Hotel's residential apartment business, and as primary operator of its hourly- room rental business.
- To conclude that Mr. La was merely a resident caretaker, even though he performed numerous duties for Summer Hotel over the years that were beyond the scope of resident caretaker would undermine the purposes of the *ESA* and unfairly benefit Summer Hotel, who would receive a considerable discount on the labour of the Complainant.
- The Delegate's finding that Mr. La is not entitled to the appropriate compensation under the *ESA* for the work that he performed for the Summer Hotel as the operator of the hourly-room rental business is not only wrong in law but is contrary to the purposes of the *ESA* in section 2, namely, to ensure that employees in British Columbia receive at least basic levels of compensation and conditions of employment, and to promote their fair treatment.
- Exclusions under the *ESA* and *Regulation,* like any employment standard legislation, should be interpreted in a narrow manner so as not to take away benefits otherwise conferred by the legislation. An exemption under the *ESA* is applicable only in the clearest of cases: *Rizzo & Rizzo Shoes Ltd.,* [1998] 1 SCR 27.
- The Determination should be varied as the Delegate erred in law in finding that Mr. La was merely a resident caretaker under the *ESA* and *Regulation* when employed by Summer Hotel. The Tribunal should also find that Mr. La "should not be subject to the definition of resident caretaker, or the exclusions which apply to that status" and award Mr. La "standard minimum wage and overtime for his all of his hours worked [at Summer Hotel Ltd.]"
- Alternatively, and only if the Tribunal finds that Mr. La did perform some employment as a resident caretaker, the Tribunal should confirm the amount awarded to the Mr. La in the Determination, and additionally award him wages at the standard minimum wage rate for the hours he worked performing services as primary operator of the Summer Hotel's room rental business, including any and all overtime to which he is entitled pursuant to section 40 of the *ESA.*

ANALYSIS

19. Section 112(1) of the *ESA* provides that a person may appeal the determination on the following grounds:

(a) the Director erred in law;

(b) the Director failed to observe the principles of natural justice in making the determination; and

(c) evidence has become available that was not available at the time the determination was being made.

20. The burden is on the appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds listed in section 112(1) above.

21. The grounds of appeal listed in section 112(1) do not provide for an appeal based on errors of fact and the Tribunal has no authority to consider appeals which seek to have the Tribunal reach a different factual conclusion than was made by the director unless the Director's findings raise an error of law: see *Britco Structures Ltd.*, BC EST # D260/03.

22. As indicated above, Mr. La's appeal is based on the "error of law" ground of appeal in section 112(1)(a) of the *ESA*.

23. In *Gemex Developments Corp. v. British Columbia (Assessor) of Area #12 – Coquitlam*, [1998] B.C.J. No. 2275, the BC Court of Appeal defined error of law as follows:

1. a misinterpretation or misapplication of a section of the Act [in *Gemex*, the legislation was the *Assessment Act*];
2. a misapplication of an applicable principle of general law;
3. acting without any evidence;
4. acting on a view of the facts which could not reasonably be entertained; and
5. adopting a method of assessment which is wrong in principle.

24. Having carefully reviewed the Reasons, the Record and the appeal submissions of counsel, I am not persuaded that Mr. La has established an error of law as defined in *Gemex Developments Corp., supra*. I will provide my reasons below.

25. The *Regulation,* in section 1, defines resident caretaker, in exclusive language, as follows:

"resident caretaker" means a person who

(a) lives in an apartment building that has more than 8 residential suites, and

(b) is employed as a caretaker, custodian, janitor or manager of that building;

26. Resident caretakers must be paid a minimum wage based on the number of suites for which they are responsible, however, resident caretakers do not have a statutory entitlement to overtime pay or minimum daily pay (see *Regulation*, sections 17 and 35).

27. The crux of counsel's argument is that the Delegate misinterpreted the *Regulation* defining "resident caretaker" and failed to sufficiently, or at all, consider the evidence Mr. La performed two distinct roles for Summer Hotel – a resident caretaker of the monthly rental suites, and a primary operator of its hourly-room rental business. As a result, he contends that the Delegate improperly denied Mr. La benefits otherwise conferred by the legislation- overtime pay and minimum daily pay. Counsel contends that Mr. La should receive "standard minimum wage and overtime for his all of his hours worked at Summer Hotel Ltd."

28. Counsel relies on the Tribunal's decisions in *Tana L. Gilberstad, supra*, as well as *Nacel Properties Ltd., supra*, to contend that an employee may be hired to perform different jobs and is entitled to be paid at different wage rate for each separate function and that there is nothing in the *ESA* or *Regulation* that precludes a person from being a resident caretaker for an employer and also perform duties as a regular employee. While I do not take any issue with the legal principles set out in these cases, the facts in these cases are distinguishable from the case at hand. In *Tana L. Gilberstad*, *supra*, the complainant was hired for three very separate job functions – a first aid attendant, an administrative clerk, and an apprentice carpenter. In the case at hand, while Mr. La may have been required to do more in relation to the hourly rental rooms of Summer Hotel, I do not find the job functions of Mr. La in relation to the hourly room rental – whether checking guests in and out, cleaning the hourly rental rooms in between guests and monitoring CCTV security system of the building – to be so functionally different to take it out of the realm or domain of a resident caretaker as defined in the *Regulation*.

29. I also find *Nacel Properties Ltd.* factually distinguishable from this case. In *Nacel*, the employee, Ms. Norman, was responsible for managing four buildings that included two apartment buildings and two townhouse complexes located up to 10 kilometers apart. She lived in one of the apartment buildings and later transferred to another. She could not perform her work – characterized by the Tribunal as caretaking, custodial, janitorial and managerial – without driving between the properties. The commute between the properties was often made difficult due to traffic on major highways. The delegate determined that Ms. Norman could only be considered a resident caretaker in the building in which she resided, and calculated wages for the hours she worked at the other properties as if she was a regular employee. The employer argued that the delegate's characterization of Ms. Norman as a resident caretaker for some buildings and not others was an absurd interpretation of the *Regulation*, and inconsistent with other Tribunal decisions. The Tribunal disagreed with the employer noting that previous Tribunal decisions concluding that resident caretakers living in one building and working in others owned by the same employer were resident caretakers for the purposes of both buildings apply only where buildings are closely proximate. In this case, the Tribunal said that the properties could not be considered to be a "grouping" of buildings, nor can they be considered "nearby" or "contiguous". The Tribunal also noted that the resident caretaker exemption did not apply to townhouses (which two of the complexes Ms. Norman managed were). In the result, Tribunal upheld the decision of the delegate. While I do not take any issue with counsel relying on the *Nacel* decision to argue that a resident caretaker for an employer may also perform duties as a regular employee for that same employer, in the case of Mr. La and Summer Hotel, I am not persuaded that the duties of Mr. La pertaining to the hourly-rental suites were outside of the "realm" of "resident caretaker.

30. I also note that counsel refers to the Branch's *Guidelines* delineating non-exclusive examples of work normally associated with a resident caretaker and contends that the tasks listed in the *Guidelines* are "intended to refer to work relating to residential units and not small rooms that do not contain kitchens that are rented by the hour". He further adds that, "individuals renting the hourly rooms [of Summer Hotel] are not 'tenants', as was intended by the *Guidelines."* While the *Guidelines* are just that- "guidelines" – and do not supersede the *ESA, Regulation*, or Tribunal decisions, I am not convinced that the *Guidelines* are as limited as counsel claims. I also find the distinction counsel makes in terms of the application of the *Guidelines* to residential suites other than those that are "small rooms that do not contain kitchens" unpersuasive. As an aside, none of the suites – monthly rental or hourly rental – had any kitchens. In the Reasons, the Delegate notes that "there were no kitchens in the rooms" and "no kitchen facilities [were] provided by Summer Hotel". However, monthly tenants were allowed to cook using hot plates. I do not find anything turns on whether the suites had kitchens or not or whether hot plates were allowed in the suite or not. The *Regulation* does not define "resident caretaker" in terms of kitchen facilities in the suite or permission to use hot plate.

31. I also note that counsel contends that because Summer Hotel failed to post or display in the building and provide Mr. La a schedule specifying the caretaker's hours of work and days off work, Summer Hotel did not intend Mr. La to perform the role of resident caretaker. Instead, it intended to employ him as primary operator of its hourly-room rental business. I am not persuaded with this conclusion. If Summer Hotel failed to post caretaker schedule in the building or failed to give a copy of a schedule to Mr. La then it stands to reason that Summer Hotel contravened section 35(2) of the *ESA*. I do not think it necessarily follows that Summer Hotel did not mean to employ Mr. La as a resident caretaker.

32. Lastly, I note that counsel refers to the Tribunal's decision in *Nacel*, *supra*, and the Supreme Court of Canada's decision in *Rizzo & Rizzo Shoes Ltd., supra*, to argue that since the *ESA* is a benefits conferring legislation it should be given large and liberal interpretation and "exclusions under the *Act* and *Regulation…* should be interpreted in a narrow manner so [as] not to take away [the] benefits otherwise conferred by the legislation". He asks the Tribunal to find "that [Mr. La] should therefore not be subject to the definition of residential caretaker, or the exclusions which apply to that status". While I do not take issue with the legal principles counsel refers to in the Tribunal's decision in *Nacel* and in *Rizzo & Rizzo Shoes Ltd.*, I do not find that these legal principles afford me the discretion to construe the definition of "resident caretaker" in the *Regulation* as counsel would have it.

33. I find the definition of "resident caretaker" in the *Regulation* is unambiguous and its application is not dependent on whether rentals are long term or very short term or whether suites contain kitchens or not or whether use of hot plates is allowed or not. I also find that the duties and responsibilities Mr. La performed in relation to the hourly-rental suites (as described in paragraphs 14 and 18 above) may fairly be categorized as caretaking, custodial, janitorial and managerial tasks within the meaning of "resident caretaker" in the *Regulation*. I do not think calling monthly rental and very short-term hourly-rental of suites as two separate businesses of Summer Hotel changes the nature of what Mr. La did in his employment with Summer Hotel. He was a resident caretaker, whether he was providing caretaking services in relation to long term or short term hourly-rental suites.

34. In the result, I find that Mr. La has not established a sufficient evidentiary basis to found an appeal on the error of law ground.

35. I find that this appeal has no prospect of succeeding and the purposes and objects of the *ESA* are not served by requiring the parties to respond to it. Therefore, I dismiss Mr. La's appeal of the Determination pursuant to section 114(1)(f) *ESA.*

ORDER

36. Pursuant to section 115 of the *ESA*, I confirm the Determination made on May 31, 2018, together with any additional interest that has accrued under section 88 of the ESA.

Shafik Bhalloo
Member
Employment Standards Tribunal