



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR MNR
 CNR FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Tenants filed seeking an Order to cancel the notice to end tenancy for unpaid rent and to recover of the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Does this matter fall within the jurisdiction of the *Residential Tenancy Act*?

Background and Evidence

The Landlord testified he entered into a written commercial lease for the Tenants to lease a commercial space to be operated as an art studio. The commercial premises include living space for the Tenants and were leased under their municipality's zoning for permitted use as "Artist live work studio class B".

Analysis

The *Residential Tenancy Act* pertains to tenancy agreements, rental units and other residential property. Section 4 (d) of the Act stipulates that this Act does not apply to

living accommodation included with premises that are primarily occupied for business purposes and are rented under a single agreement.

The *Residential Tenancy Policy Guideline # 27* (6) provides clarification of jurisdiction on commercial tenancies as follows:

The Residential Tenancy Act⁵ provides that the Act does not apply to living accommodation included with premises that

- i) are primarily occupied for business purposes, and
- (ii) are rented under a single agreement

Where the premises are used primarily for residential purposes and the tenant operates a home-based business from the premises, this does not mean the premises are occupied for business purposes. The distinction is whether the premises are business premises which include an attached dwelling unit or whether the premises are residential in nature with a lesser business purpose. The bylaws of a city may be a factor in considering whether the premises are primarily occupied for a business purpose. For example, if a tenant uses part of the residential premises as an art studio, or operates a bookkeeping business from the home, the Act would apply as the premises are not primarily used for business purposes. However, if the primary purpose of the tenancy was to operate a business, then the Act may not apply and the arbitrator may decline jurisdiction over the dispute.

Conclusion

I HEREBY DISMISS these applications, without leave to reapply, for want of jurisdiction.

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: March 21, 2011.

Residential Tenancy Branch