

## **DECISION**

### **Dispute Codes:**

MNDC, MNSD, MNR, MND, FF

### **Introduction**

This Dispute Resolution hearing to deal with an Application by the landlord for a monetary order against the tenant for rent owed or compensation for damage or loss under the Act and to retain the security deposit as partial satisfaction for the amount claimed. The hearing was also convened to deal with a cross Application by the tenant for a monetary order for the return of the security deposit and compensation for damage or loss under the Act.

Both the landlord and the tenant were present and gave testimony.

### **Preliminary Matter**

At the outset of the hearing the landlord testified that the tenancy agreement did not relate to the use of the rental unit for residential purposes, but only involved a contract for a commercial tenancy. The tenant also testified that the tenancy related solely to a commercial tenancy agreement.

Section 2(1) of the Residential Tenancy Act states that, “despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.” (my emphasis)

Section 6 of the Act states that rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution in respect of the rights, obligations and prohibitions under the Act or terms of a tenancy agreement that: (i) are required or prohibited under the Act, or (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

The Act defines “*tenancy*” as a tenant's right to possession of a rental unit under a tenancy agreement. Under the Act “*tenancy agreement*” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting

possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. The Act defines "*rental unit*" as living accommodation rented or intended to be rented to a tenant and defines "*landlord*", to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord:

- (i) permits occupation of the rental unit under a tenancy agreement, or
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

In this instance, I find that the contract between the applicant and respondent fails to meet the above criteria and there exists no genuine residential tenancy agreement between these two parties being that the unit is only used for commercial purposes.

Accordingly, this contractual relationship and matters under dispute do not fall under the authority of the Residential Tenancy Act and the application cannot proceed and must be dismissed.

I hereby dismiss the application without leave to reapply. The landlord and the tenant are both at liberty to seek remedy in another legal forum.

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 2011.

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Residential Tenancy Branch