



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting her to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issue to be Decided

Does this tenancy fall under the jurisdiction of the *Residential Tenancy Act*?

Background and Evidence

This tenancy began on June 1, 2011 and ended on October 12, 2011. The parties agreed that at the time they negotiated the tenancy agreement, the tenants advised the landlord that they intended to operate a yoga studio from the home. The tenants testified that they chose the rental unit because it offered a sizeable area in the living room and dining room in which to place the studio.

The parties agreed that at the time the tenancy agreement was signed, the living room and part of the dining room floors were unfinished, having no flooring. The parties agreed that the tenants could install flooring in that area for the studio as long as they removed the flooring at the end of the tenancy. The parties further worked out details respecting parking for the tenants' clients.

Analysis

Section 4(d) of the Act provides as follows:

- 4 This Act does not apply to
 - 4(d) living accommodation included with premises that
 - 4(d)(i) are primarily occupied for business purposes, and

4(d)(ii) are rented under a single agreement

After having carefully considered the evidence of the parties, I have come to the conclusion that this tenancy does not fall within the jurisdiction of the Act.

The tenants stated that they chose the unit because it could accommodate a yoga studio and because they wished to combine their business with their residence. The business was of such importance that the studio occupied a large portion of the living area in the unit and the tenants installed flooring at their own expense. While residing at the property, the tenants held instructional classes and large, public events associated with their business. The reason they ended the tenancy was because they believed the septic system could not support the large number of clientele attracted by the business.

While it is clear that it is a tenancy of a residential property, I find that the primary purpose of the tenancy, at least from the perspective of the tenants, was to establish a business at the property and for this reason I dismiss the claim for want of jurisdiction.

Conclusion

The claim is dismissed 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: April 17, 2012

Residential Tenancy Branch