



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF
CNR

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Owner and the Occupant.

The Owner filed on June 16, 2014, seeking an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; to keep all of the security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Occupant for this application.

The Occupant filed on May 27, 2014, seeking an Order to cancel the notice to end tenancy for unpaid rent.

Issue(s) to be Decided

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

Background and Evidence

At the outset of this proceeding the Owner's Agent stated that he has not checked on the property since sometime near the beginning of June 2014. He indicated that he was not concerned that the Occupant had vacated the property because the Occupant is running a "rehab facility" and could not move his clients that quickly.

Upon further clarification the Agent submitted that they entered into a lease agreement with the Occupant to operate a housing facility for people requiring rehabilitation. He said the Occupant possesses a license from Community Living to operate housing facility which requires the Occupant to reside at the property. The house is 4500 square feet which includes a 600 square foot basement suite. The Agent stated that he

believes the Occupant resides in the basement suite and operates his rehab client facility in the remaining 3900 square feet. The Agent stated that he did not know if the rehabilitation program being operated by the Occupant was transitional in nature or if the other occupants were long term occupants.

Analysis

The *Residential Tenancy Act* pertains to residential 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:

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.

In *Shea v. Tyrell*, 2007 BCSC 1601 – The court found that in determining whether the premises were excluded from the *Residential Tenancy Act*, the predominant use of the premises was the determining factor.

In this case the parties entered into one lease agreement for the entire property where the occupant would be using 600 square feet as his own residence and would be operating a rehabilitation facility in the remaining 3900 square feet.

Based on the purpose of this lease agreement, I find this situation to be excluded from the *Residential Tenancy Act*, and I declined to hear the matters for want of jurisdiction.

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: July 17, 2014

Residential Tenancy Branch

