



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, PSF, LRE, OPT, AAT, AS, RR, SS

Introduction

This hearing dealt with the tenant's application for a wide variety of orders including an order of possession for the tenant. Both parties appeared and had an opportunity to be heard.

The landlord questioned whether the Residential Tenancy Branch had jurisdiction over this dispute. I heard the evidence on the preliminary issue and the main dispute and explained to the parties that in my written decision I would be deciding the jurisdictional issue first, and only if I decided that I had jurisdiction over this dispute would I go on to decide the tenant's application.

Preliminary Issue(s) to be Decided

Does the Residential Tenancy Branch have jurisdiction over this dispute?

Background and Evidence

The rental unit is located on the second floor of a very old commercial building. On the lower level are a coffee shop and a telecom business. On the second floor are three office spaces, each 300 to 500 square feet in size. Each space is accessed from the same hallway. One space has a sink. The only bathroom facility is a half bath, accessed from the hallway. There are no cooking facilities provided on the floor.

The landlord testified that the building is neither zoned nor insured for residence.

The landlord also testified that the three spaces have always been rented as offices or studio spaces.

The tenant testified that he is an artist. He rented two of the spaces with the idea of creating a studio/gallery space. His idea was that he would stay in the space until the renovations were complete and he started generating income from the gallery. He also testified that an artist does not work regular hours and has to be in their studio when inspiration strikes.

The tenant said he has been cooking on hot plate and showering at a nearby athletic facility. He also spends some time at his girlfriend's home.

The landlord testified that when this tenancy was first entered into he told the tenant some sleepovers were all right but he could not live there permanently. His evidence is that over the past year he has repeatedly told the tenant that the unit is not a residence and he has to find somewhere else to live.

Analysis

The Residential Tenancy Branch has been created by statute, the *Residential Tenancy Act*, and can only hear and resolve disputes that are within the jurisdiction created by the statute.

The *Act* sets out that it only applies to rental units that are defined as "living accommodation rented or intended to be rented to a tenant".

The fact that someone has been living in a space does not make it a "living accommodation". The spaces rented to the tenant are clearly commercial spaces, not personal residences.

Accordingly, the Residential Tenancy Branch does not have jurisdiction over this dispute.

Conclusion

The Residential Tenancy Branch does not have jurisdiction over this dispute.

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: February 13, 2015

Residential Tenancy Branch

