



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Tepper Hotels Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, ERP, RP, LRE, AAT, RR, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order suspending or setting conditions on the landlord's right to enter the rental unit; for an order allowing access to (or from) the rental unit for the tenant or the tenant's guests; and for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

An agent for the landlord company (hereafter referred to as the landlord) attended the hearing with the property manager. The tenant also attended.

The parties did not give affirmed testimony, but made submissions only with respect to jurisdiction. The parties each provided evidentiary material to the Residential Tenancy Branch and to each other, which was referred to during the hearing.

Issue(s) to be Decided

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

Background and Evidence

The tenant submits that a tenancy agreement was signed by the parties, which was made on a form entitled Residential Tenancy Agreement, and a copy has been provided. The tenant also submits that the parties had a verbal agreement that the tenant could use the space as an art studio and temporary living area, so the tenant converted it to a residential unit by installing television cable, internet and telephone. The tenant also did improvements such as installing 2 French doors, demolishing a wall and removed ceiling tiles. The rental unit is a storage unit that has been converted into

living space. There is no kitchen or bathroom, however the tenant has a hot plate and moved in a fridge. The landlord gave the tenant keys to a common bathroom which is located down a corridor, as well as permission to use the outside water tap.

The tenant also submits that an email from the property manager, a copy of which has been provided, proves that the landlord was well aware that the tenant was residing there as a residential unit. The email is dated March 30, 2015 and states, in part, "...I was informing you in case you were still living down stairs; wasn't sure...Did you leave postdated checks yet..."

The tenant also submits that Shaw Cable will not hook up television cable without the owner's consent because it requires drilling to run lines, and the tenant has had television cable connected. A copy of a cable statement of account has also been provided dated October 13, 2015 for service at the basement of the dispute address.

The tenant also submits that the tenancy falls within the *Act* because the landlord served the tenant with a notice to end the tenancy using a form from the Residential Tenancy Branch, a 1 Month Notice to End Tenancy for Cause (the notice), which applies to the *Act*. A hearing was conducted in August, 2015 wherein the tenant had applied to cancel the notice, and sought other relief. The other relief sought was severed upon a finding that it was unrelated to the notice, and dismissed with leave to reapply. A copy of the Decision of the director has been provided and it states that neither party had provided a copy of the notice as evidence for the hearing; neither party could recall the cause listed or the effective date of vacancy. As a result, the tenant's application to cancel the notice was dismissed without leave to reapply. The Decision is silent on whether or not the landlord orally requested an Order of Possession, however it specifies that such an order was not made.

Another hearing was conducted on October 22, 2015 wherein the landlord had applied for an Order of Possession and again, the evidence was not provided for the hearing. The landlord's application was dismissed with leave to reapply.

The landlord submits that the room is a very large storage space with no windows, water or toilet. It's been rented for storing extra furniture or stationary for an office. The landlord has 14 apartments in the building and never intended to rent the storage space as a residential living unit. The landlord is not permitted to rent it as residential property and has a letter from the municipality stating clearly that nobody is permitted to live there. The landlord used the wrong forms for the tenancy agreement and the notice, but didn't know the tenant intended to live in it, and stated that she couldn't imagine that.

The landlord did not authorize a cable company to install cable to the storage room.

The property manager submits that she is the building manager, and was present on March 24, 2015 when an electrical inspector inspected all units in the complex. They discovered the storage room was a make-shift apartment.

The property manager talked to the tenant saying that he couldn't sleep there, but the tenant replied that he sometimes stayed late. The email referred to by the tenant is dated March 30, 2015 which is after the inspection on March 24, 2015. The tenant was told to cease and desist, that it was against policy and other tenants had been complaining.

The tenant was permitted to use the bathroom as a courtesy, and he always said he wasn't living there, but worked in there late at night.

The property manager did not authorize the cable company to install cable.

Analysis

I have reviewed the documentation provided by the parties, and in particular the tenancy agreement. Although it is written on a pre-printed form stating that the *Residential Tenancy Act* applies, it also clearly states that the unit is to be used as an art studio and storage. All amenities in the pre-printed form have lines drawn through them, although the tenant argues that water, electricity and heat are checked off and not crossed out on the pre-printed form. Whether they are checked off or crossed out, I am not satisfied that they represent a residential tenancy when no fridge, stove, oven or other amenities are included.

I have also reviewed the previous Decisions, and neither Arbitrator made a finding that a residential tenancy existed. The parties failed to provide any evidence, and the applications were dismissed.

With respect to the cable statement, the landlord and the landlord's agent deny that a cable company sought permission to run the cable lines.

With respect to the email, the landlord's agent stated that she was not aware that the tenant was living in the space and discovered a make-shift apartment on March 24, 2015, and the email is dated March 30, 2015. I find that to be consistent with the landlord's position. The email also requests post-dated cheques, but I am not satisfied that such a request proves a residential tenancy and could very well be for the cost of renting a storage space.

In the circumstances, I find that the landlord never intended to create a tenancy agreement for a storage room to be used as residential premises. The *Residential Tenancy Act* applies to residential premises, and I find that this agreement does not constitute an agreement to rent the space as a residential unit, and I therefore decline jurisdiction to hear the tenant's application.

Conclusion

For the reasons set out above, I hereby decline jurisdiction to decide on the tenant's application.

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: November 20, 2015

Residential Tenancy Branch

