



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF (Owner/Subletter's Application)
CNR, MNDC, FF (Occupier's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both parties who are the Applicant and Respondent on each other's Application. The parties are referred throughout this decision by their initials and their role in this dispute which is documented on the front page of this decision.

Background

The owner of the rental unit, "WC", rented the dispute property to "JN" in September 2013. During that tenancy, JN obtained written consent from WC to sublet the dispute property to the occupier, "KD". JN then became the subletter and she was assisted through the tenancy by her agent "CW". A written residential tenancy agreement was completed and signed for the tenancy between JN and KD to start on October 17, 2014 until the end of October 2015. Rent for the dispute property for that tenancy was set at \$3,439.00 payable on the first day of each month. A security deposit was paid by the occupier which has since been returned. The tenancy between KD and JN ended in October 2015. After this time, KD entered into a tenancy directly with the owner (WC), which now continues.

As the tenancy between JN and KD had ended and JN did not require an Order of Possession, the parties withdrew their Application requesting an Order of Possession and to cancel the notice to end tenancy for unpaid rent. The parties indicated that they appeared for the hearing in order to deal with their monetary claims. During the hearing, the Tenant raised the issue of jurisdiction because she had been informed by the Residential Tenancy Branch that there may not be jurisdiction in this matter. Therefore, I turned my mind firstly to the issue of jurisdiction in this situation before I made any legal findings on the parties' monetary claims. In this respect, the parties provided the following affirmed testimony during the hearing.

Jurisdictional Issues

The occupier of the dispute address testified that she had rented the dispute property which was a townhome comprising of three levels for a total of 1,200 square feet. The 570 square feet ground floor level is specifically designated for use as a commercial shop space. The occupier testified that entry and exit into the townhouse was gained through the shop front and then through a set of stairs inside the shop to access a door into the living area of the second floor. The second and third floors are used for residential purposes.

The occupier testified that she had rented the property solely for the business space as she wanted to run a medical spa from the location. The occupier confirmed that when she took occupancy of the townhome she then continued to run that business. The occupier described the space with a shop front providing medical spa services to the public with published opening hours.

JN did not dispute KD's testimony and confirmed that it was correct. JN confirmed that the townhome property is a live-in and work type property and was rented to KD because she wanted to run her business using the commercial shop front space on the ground floor. CW and JN also confirmed that they were renting the same property from the owner of the dispute property for the same purpose of operating a business until her tenancy with the owner had ended and the space was then rented to KD for her business. JN also confirmed that they had moved their business to a nearby location.

I asked the occupier of the rental unit that had the dispute property not had the commercial space, would she have still rented it. The occupier replied that she only rented the property so that she could rent her business from the location which she still continues to do so. The parties confirmed that the entire dispute property was rented under a single agreement and there were not separate agreements for the residential and commercial spaces of the property.

Jurisdictional Analysis

Before I consider the details of this dispute, I must first consider the issue of whether the *Residential Tenancy Act* (the "Act") applies in this case and whether I have jurisdiction to make legal findings which are binding in law. Section 4(d) of the Act stipulates that the Act does not apply to living accommodation included with premises that are primarily occupied for business purposes, and are rented under a single agreement. In addition, Section 6 of Policy Guideline 27 to the Act provides guidance on commercial tenancies and states in part:

“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 included 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 RTB may decline jurisdiction over the dispute. See also Guideline 14 on this topic.”

[Reproduced as written]

Policy Guideline 14 to the Act states in part:

“To determine whether the premises are primarily occupied for business purposes or not, an arbitrator will consider what the “predominant purpose” of the use of the premises is. Some factors used in that consideration are: relative square footage of the business use compared to the residential use, employee and client presence at the premises, and visible evidence of the business use being carried on at the premises.”

[Reproduced as written]

Based on the foregoing, I find that I do not have jurisdiction to hear this dispute. This is because I find the evidence satisfies me that the dispute property was rented to the occupier by the subletter for the **primary and predominant** purpose of operating a business under a single agreement. This is because the occupier confirmed that she would not have rented the dispute property had it not come with the shop on the ground floor, a fact which was not disputed by the subletter. Furthermore, I find that the occupier operated a medical spa business which is visible and open to patrons, and continues to do so.

Although the parties signed a residential tenancy agreement, and the residential portion of the property (the second two floors) comprises a larger square footage relative to the shop on the ground floor, I find these factors do not convince me that jurisdiction applies in this case. If the parties had engaged into a separate agreement for the residential

and commercial parts of the dispute property then I would be more inclined to make a finding that the Act did apply to the residential portion of the property.

Conclusion

For the reasons set out above, I decline jurisdiction in this matter and both files are now closed. Both parties are at liberty to seek legal advice regarding their 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: December 29, 2015

Residential Tenancy Branch

