



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AL WILLIAMS & SON LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Applicants on March 15, 2016. The Applicants applied to cancel a notice to end tenancy for the Respondent’s use of the property. The Tenants also applied to recover their filing fee and for “Other” issues namely, that the reason why they were applying to cancel the notice to end tenancy was because this was a commercial tenancy.

The Respondent appeared for the hearing and provided affirmed testimony. However, there was no appearance by the Applicants during the ten minute duration of the hearing. The Respondent confirmed that she had been served with a copy of the Application from the Applicants by registered mail. The Respondent confirmed that she had not provided any documentary evidence prior to the hearing.

Issue to be Decided

Before I was able to make any legal findings in this matter, I must first determine if the jurisdiction of the *Residential Tenancy Act* (the “Act”) under which the Application was made applies in this case.

Background

The Respondent testified that this was a commercial tenancy and that the Applicants were leasing a shop from which they were carrying out a business. The Respondent confirmed that she was the owner of a residential property that contained a residential home and separate premises on the residential property. The Respondent confirmed that when she purchased the property, the separate premises were already being rented out to the Applicants for them to operate a business from, which involved truck maintenance. There was no agreement of any kind in place and the Respondent now

seeks to get back possession of the dispute premises for her own use. The Respondent confirmed that the Applicants reside elsewhere and only use the structure on her residential property for the purpose of operating their business.

Jurisdictional Analysis

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]

Furthermore, 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]

The Applicants in this case state on the Application that this is a commercial tenancy. The Respondent confirmed that the dispute dwelling is being rented out to the Applicants for business purposes only and there is no use of this dwelling for residential purposes. Therefore, based on the evidence before me, I am only able to conclude that the Act does not apply in this case as the dispute dwelling is being occupied and used for business purposes.

Conclusion

For the reasons set out above, I decline jurisdiction in this matter and this file is now closed. The parties are at liberty to seek legal advice regarding 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: May 03, 2016

Residential Tenancy Branch