



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1065872 B.C. LTD. D.B.A. HEAVENLY ENTERPRISES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Applicant's Application for Dispute Resolution, received at the Residential Tenancy Branch on April 27, 2016 ("Application").

The Applicant applied for the following relief pursuant to the *Residential Tenancy Act*: an order permitting the Applicant to retain the security deposit or pet damage deposit; and an order granting recovery of the filing fee.

The Applicant was represented at the hearing by J.B., who provided his solemn affirmation. The Respondent did not attend the hearing.

The Applicant provided a Canada Post receipt, including a tracking number, as evidence of service of the Notice of a Dispute Resolution Proceeding (the "Notice") by registered mail on May 1, 2016.

Further, I note the Respondent submitted documentary evidence to the Residential Tenancy Branch on July 4, 2016.

Pursuant to section 90 of the *Residential Tenancy Act*, documents served by registered mail are deemed to be received five days later. Accordingly, I am satisfied the Respondent was duly served with the Notice on May 6, 2016.

The Applicant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

On behalf of the Applicant, J.B. testified that the property is a commercial and light industrial use building. The ground floor is made up of shops, whereas the upper floor is made up of office space.

The Applicant also submitted documentary evidence including a commercial lease between the parties, dated January 15, 2016, which stated:

“[the Respondent] will not use the premises nor allow the premises to be used for any other purpose than that for which the premises are hereby leased, namely: BUILDINGS MAINTENANCE AND RENOVATIONS.”

Finally, J.B. advised that the Application was filed out of an abundance of caution in the event that it had become a residential property by virtue of the fact some tenants reside in the office space from time to time.

Residential Tenancy Branch Policy Guideline 14 states:

“Commercial tenancies are usually those associated with a business operation like a store or an office. If an arbitrator determines that the tenancy in question is a commercial one, the arbitrator will decline to proceed due to lack of jurisdiction.”

Policy Guideline 14 also provides guidance for determining whether or not a tenancy is commercial in nature. An arbitrator is to consider the “predominant purpose” of the use of the premises.

Based on the oral testimony and the lease presented with the Applicant’s documentary evidence, I am satisfied the predominant purpose of the premises is commercial. I am unable to find that the parties agreed that a residential tenancy would occur alongside a commercial lease. Accordingly, I find that the *Residential Tenancy Act* does not apply to this dispute.

As I have found there is no jurisdiction to hear this dispute under the *Residential Tenancy Act*, the parties are advised to seek legal advice on the proper forum for resolution of the matter.

Conclusion

The *Residential Tenancy Act* does not apply to this dispute and I decline 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 05, 2016

Residential Tenancy Branch