



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This was an application for compensation for outstanding rent. Only the applicant attended the teleconference hearing.

Issue(s) to be Decided

Is there a tenancy?
Is there jurisdiction under the Act?
Is the applicant entitled to compensation?

Service of the Application

The applicant testified that on October 24, 2016 he gave the application to AB one of the respondents and told her to serve the male respondent SW but SW was under a no contact order to refrain from living at the unit. The applicant had no independent knowledge whether SW was ever given or received a copy of the application. Accordingly I find that only AB was served with these applications.

Background and Evidence

The applicant testified that he rented a workshop to the respondents on September 27, 2016. The respondents brought their trailer on the property and slept in it while SW used the workshop. The rent was \$ 1,450.00. There was not any written tenancy agreement or any security deposit. The applicant was vague as to what portion of the rent was attributable to the workshop and the trailer but testified that most of it was for the shop as the trailer was brought onto the property subsequently. The applicant claimed that the respondents moved out on November 28, 2016 but failed to pay rent for October or November. The applicant is claiming for recovery of the sum of \$ 2,900.00 and the filing fee of \$ 100.00.

Analysis

Regarding the commercial or residential character of tenancies Policy Guideline 14 states as follows:

Generally

Neither the Residential Tenancy Act nor the Manufactured Home Park Tenancy Act applies to a commercial tenancy. 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 in arbitration is a commercial one, the arbitrator will decline to proceed due to a lack of jurisdiction.

Sometimes a tenant will use a residence for business purposes or will live in a premises covered by a commercial tenancy agreement. The Residential Tenancy Act provides that the Act does not apply to “living accommodation included with premises that (i) are primarily occupied for business purposes, and (ii) are rented under a single agreement.”¹

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.² 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.³

In this matter the applicant testified that the dominate purpose of the tenancy was to rent the shop. The rent was predominantly for the shop and it was unclear from the applicant what portion if any was for the ability to park the trailer. I find that the trailer situated on the applicants’ property was only incidental to the use of the shop. I find that the dominate purpose of the tenancy was of a commercial nature: to use a shop, and accordingly neither the Manufactured home Park Tenancy Act nor the residential Tenancy Act are applicable. The fact that the respondents chose to sleep in the trailer while the work was done in the shop for the trailer does not change the purpose of the tenancy. Accordingly I have declined jurisdiction for these applications.

Conclusion

I have declined jurisdiction with respect to all of the applications. The applicants will not recover their filing fee.

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 12, 2016

Residential Tenancy Branch