



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALKEL AUTO SALES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR OPR OLC

Introduction

Only the tenant/applicant attended the hearing and gave sworn testimony. The Notice to End Tenancy is dated May 15, 2017 to be effective May 25, 2017 and the tenant confirmed it was served on the door of the unit. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To find this is a commercial tenancy and I have no jurisdiction;
- b) In the alternative; to cancel a notice to end tenancy for unpaid rent pursuant to section 46;
- c) To dispute an illegal rent increase.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that this is a residential tenancy and there is unpaid rent? Or is the tenant entitled to any relief?

Background and Evidence

Only the tenant attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced February 2016, rent is \$1000 a month plus \$300 for parking. No security deposit was paid but the landlord collected first and last month's rent. The landlord served a Notice to End Tenancy for unpaid rent of \$2685 due May 15, 2017.

The tenant said this is not a residential tenancy. He said he sold his large home with four garages and a hobby shop and rented this warehouse type unit for storage in 2016. He said there are no living quarters but only a washroom in his unit. He described the building as having all warehouses with businesses such as a body shop and mechanic shop. He said he lives with his daughter and has had a number of serious health

issues. He requests that this Notice be set aside and says I have no jurisdiction over this matter. In the alternative, he wants to dispute an illegal rent increase.

The tenant submitted photographs of the building and the Notice to End Tenancy in evidence. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

The Act defines a “rental unit” as **living accommodation** rented to a tenant. “Residential Property” is defined as a building in which one or more rental units are located. Furthermore section 4 (d) of the Act states that the Act does not apply to “living accommodation included with premises that are primarily occupied for business purposes”. I find the tenant’s unit is not living accommodation but storage. I find the weight of the evidence is that it is used primarily for business purposes. The tenant’s evidence is well supported by his photographs illustrating the commercial building.

Therefore, I find I have no jurisdiction over this matter and if they wish to pursue their dispute, the parties will have to use another forum such as court. The Notice to End Tenancy is a Residential Tenancy Act form and as such, is not valid. The tenant’s Application to dispute a rent increase is dismissed as I have no jurisdiction.

Conclusion:

I dismiss the Application of the tenant as I have no jurisdiction in this matter.

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 26, 2017

Residential Tenancy Branch