



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARIAS & ASSOCIATES PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Applicant requested an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Applicant originally applied by way of ex parte Direct Request Proceeding pursuant to section 55(4) of the *Residential Tenancy Act*. As a result of that application the Applicant was granted an Order of Possession by Decision dated December 8, 2017.

The Respondent applied for Review Consideration pursuant to section 79 of the *Act* alleging the December 8, 2017 Decision and Order were obtained by Fraud. By Decision dated December 18, 2017, the Arbitrator suspended the December 8, 2017 Decision and Order of Possession and ordered review hearing.

The review hearing convened before me by teleconference on January 11, 2018. Both parties called into the hearing.

Preliminary Matter—Jurisdiction

The Applicant testified that the tenancy began September 1, 2017. He testified that monthly rent was payable in the amount of \$500.00. The Applicant further stated that the rental unit is a 2,000 square foot unfinished basement which is rented by the Respondent for storage. He confirmed that the rental unit is not used for living accommodation.

The Respondent stated that the monthly rent is \$60.00 per month and that the Applicant submitted a fraudulent tenancy agreement in evidence. He confirmed that the rental unit is not used for living accommodation, does not have a kitchen or bathroom, and is only used for storage.

Analysis

Section 1 of the *Residential Tenancy Act* provides the following definitions of rental unit:

"rental unit" means living accommodation rented or intended to be rented to a tenant;

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

In the case before me, I find that the unfinished basement suite is not a rental unit as defined by the *Act* as it is not living accommodation. I also find that the tenancy agreements submitted in evidence by the parties, while drafted on the form provided by the Branch, are not tenancy agreements "between a landlord and tenant respecting possession of a rental unit".

I therefore find that there is no residential tenancy between the parties. The Residential Tenancy Branch, like any administrative decision-making body, must respect the scope of authority conferred on it by the legislature. As an Arbitrator delegated authority under the *Residential Tenancy Act*, I may only consider tenancies which fall under the *Act*; in this case, I find the arrangement between the parties to be outside the *Act* and I therefore decline jurisdiction.

Conclusion

The dispute involves the rental of a storage area in an unfinished basement which is not used as living accommodation and is therefore not a rental unit as defined by the *Act*.

Jurisdiction is declined.

Pursuant to section 82(3) of the *Act*, the Decision and Order made on December 8, 2017 are hereby set aside.

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: January 11, 2018

Residential Tenancy Branch