



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an early end to this tenancy and an Order of Possession pursuant to section 56 and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

While I heard evidence for the landlord's application, I must address a preliminary matter prior to considering the substantive claims made by the landlord.

Preliminary Matter

At the outset of the hearing, I raised the issue of whether the Residential Tenancy Branch has jurisdiction to hear this matter. The application named a business as the "tenant"/respondent to the application. As evidence for this hearing, the applicant testified that there was no written agreement between the parties. He testified that the oral agreement between the parties was that the business named in the application would use the space provided by the applicant as a front office and storage space.

The applicant at this hearing testified that, sometime after the verbal agreement between himself and the respondent, the respondent seemingly moved into the property, using it as a residential premise instead of the commercial premise it was intended to be. The applicant testified that the respondent has been difficult to contact, that he no longer appears to be residing inside the premises and that he has abandoned a variety of items within the office property.

The applicant testified that he made his application because the applicant is not using the rental space for business/commercial tenancy as was agreed between the two parties.

In considering the evidence and submissions of the applicant, I note the following,

- *The applicant and respondent agreed to the rental of a commercial rental unit;*
- *The respondent may have resided within the commercial rental unit;*
- *The property is considered a commercial rental unit;*
- *The details of the verbal agreement between parties consisted of an office front and a storage space;*
- *There is no written agreement between the applicant and respondent.*

For a matter to be considered under the *Residential Tenancy Act*, both parties to the application must have a role that fits within the scope of the *Act*. To consider a matter under the *Act*, a tenancy must be formed with both a tenant and a landlord. Under the *Residential Tenancy Act* section 2, the *Act* applies to residential tenancy agreements and section 4 provides a non-exhaustive list of what the *Act* does not apply to including the rental of commercial properties,

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

What this Act does not apply to

4 This Act does not apply to...

...(d) living accommodation included with premises that

- (i) are primarily occupied for business purposes, and
- (ii) are rented under a single agreement...

The applicant did not submit a copy of a signed agreement between the parties but candidly described the circumstances of the tenancy. Based on the evidence provided at this hearing by the applicant, the respondent may have been residing in a commercial

property unit. According to the wording of section 4(d), the Act does not apply to this type of arrangement.

Residential Tenancy Policy Guideline No.27 addresses matters of the jurisdiction of the Residential Tenancy Branch,

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 include an attached dwelling unit or whether the premises are residential in nature with a lesser business purpose...

Residential Tenancy Policy Guideline No. 14 also addresses the exclusion of most commercial tenancies under the *Residential Tenancy Act*,

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.

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.

A fundamental requirement of any tenancy is an agreement, a meeting of the minds. The applicant gave decisive testimony that he wished to evict the respondent because the property was rented as a commercial enterprise only and the respondent has attempted to reside within the commercial unit. While there may have been some informal and changeable understanding between the applicant and respondent, the testimony of the respondent is evidence sufficient to show that the applicant and the

tenant entered into an agreement with the primary (predominant and exclusive, based on the applicant's testimony) purpose of office and storage space.

Based on the applicant's description of the arrangement with the respondent, I find that this arrangement was not a residential tenancy and therefore the living arrangement is not governed by the *Residential Tenancy Act*. As a result, I find that I do not have jurisdiction in this matter.

Conclusion

I decline to hear the matter as I do not have 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: January 31, 2018

Residential Tenancy Branch