



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, AAT, DRI, LAT, LRE, OLC, PSF, RP

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Landlord's Use of the Property, to gain access to the property, to dispute a rent increase, to change the locks on the rental unit, for the Landlord to comply with the Act, regulations and tenancy agreement, for the Landlord to provide services and facilities as agreed and for repairs to the unit, site or property.

The Applicant said he served the Respondent with the Application and Notice of Hearing (the "hearing package") by registered mail on March 15, 2018. Based on the evidence of the Applicant, I find that the Respondent was served with the Applicant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

At the start of the conference call the Tenant's Counsel said questioned whether the Residential Tenancy Act had jurisdiction in this situation as the Notice to End Tenancy is to a Limited Company and the Tenant. The Tenant's Counsel continued to say the property is about 10 acres and the Tenant operates a container storage business from the property. As well the Counsel said the Tenant does not live on the property and the Tenant rents the house to a different tenant. Counsel said there are approximately 60 storage containers on the property at the present time. The Tenant and his Counsel said this is a commercial tenancy situation and they do not believe the Residential Tenancy Act has jurisdiction. Counsel requested the Notice to End Tenancy be cancelled.

The Landlord agreed the Tenant is operating a business on the property and the Tenant does not live on the property. The Landlord continued to say that the Municipality has issued a BY-LAW order to stop the business operating on the property. The Landlord said that is why he issued the 2 Month Notice to End Tenancy for Landlord's Use of the Property.

In reviewing the testimony and evidence it is agreed by both parties and it is apparent from the Company being named on the Notice to End Tenancy that the Tenant is operating a business on the property. Further I accept both parties testimony that the Tenant does not live on the property. Section 4 of the Residential Tenancy Act says the Act does not apply to:

Section 4 (1) (d) living accommodation included with premises that

(i) **are primarily occupied for business purposes**, and

(ii) are rented under a single agreement,

I accept the Tenant's testimony that this property is primarily used for commercial purposes, therefore I find the Residential Tenancy Act does not have jurisdiction in this situation. The Landlord may want to seek legal advice to determine how to proceed with his claims.

I find this situation is commercial in nature and there is no evidence of a residential tenancy between the Tenant and the Landlord. Consequently, the Residential Tenancy Act does not have jurisdiction in this situation. I dismiss the application as I find no authority to decide this matter under the *Residential Tenancy Act*.

Conclusion

The application is dismissed for lack of 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: April 17, 2018

Residential Tenancy Branch