



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S/FFL

Introduction

On April 26, 2018, the Applicant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting a Monetary Order for damages and to apply the claim against the security deposit and to recover the cost of the Filing Fee. The matter was set for a participatory hearing via conference call.

The Residential Managers, who represented the Applicant, attended the conference call hearing; however, the Respondent did not. Applicant TH testified that he sent the Respondent the Notice of Hearing by registered mail; however, Applicant TH did not have the specific dates or the tracking number to reference. I gave Applicant TH time to submit the tracking number to prove service and proceeded with the Preliminary Matters.

Applicant TH was provided the opportunity to present his affirmed evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary Matters

While I listened to the initial testimony of Applicant TH, I learned that the Respondent had substantially altered the rental unit by creating windows in interior walls, building new walls, and re-wiring specific rooms. Applicant TH stated that the Respondent had built a sound studio in the rental unit and that, at times, it was rented out as a space for theatrical rehearsals.

Applicant TH stated that the noise resulting from the commercial use of the rental unit was one of the reasons the Applicant served the Respondent with a One Month Notice

to End Tenancy for Cause in 2017. The Application resulted in an arbitrated decision that authorized the Applicant to be reimbursed for the Filing Fee for their claim.

As Applicant TH continued to provide testimony, I learned that the Respondent did not live in the rental unit. Rather, the Respondent conducted a business out of the rental unit and, although I heard further evidence regarding the Applicant's claim, I was concerned about the jurisdiction the Residential Tenancy Branch had over this Application.

Analysis

Section 4(d) of the Act states that the Act does not apply to a living accommodation included with premises that are primarily occupied for business purposes, and are rented under a single agreement.

Residential Tenancy Policy Guideline #27 provides further clarification on Residential Tenancy Branch jurisdiction and states the following under Section VII - Commercial Tenancies:

“...if a tenant uses part of the residential premises as an art studio, or operates a bookkeeping business from the home, the Act would apply as the premises are not primarily used for business purposes. However, if the primary purpose of the tenancy was to operate a business, then the Act may not apply and the Residential Tenancy Branch may decline jurisdiction over the dispute.”

I accept the testimony of Applicant TH that the Respondent has signed an agreement to rent a premise that could be used as a living accommodation; however, is primarily occupied for a business purpose of being a recording studio. I find that Applicant TH further clarified the jurisdiction issue when he testified that the Respondent does not live within the rental unit. As a result of the above, I find that the premises are primarily occupied for business purposes, and therefore, I decline jurisdiction over the dispute.

I acknowledge that there have been previous Residential Tenancy Branch findings where the relationship between the Applicant and Respondent may have been considered a tenancy under which the Act would apply; however, I suspect that the commercial details of the relationship may not have been fully disclosed (through no fault of either party).

Conclusion

I decline to proceed with this Application due to a lack of jurisdiction. I dismiss this Application without leave to reapply.

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: June 08, 2018

Residential Tenancy Branch