



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) under the *Residential Tenancy Act* (“Act”) by the tenant for a money owed or compensation for damage or loss under the *Act* in the amount of \$6,000.00 and the return of the tenant’s personal property.

The landlord attended the teleconference hearing and gave affirmed testimony. The tenant did not attend this hearing, although I left the teleconference hearing connection open for 10 minutes until 9:40 a.m. Pacific Time in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. Pacific Time on Wednesday, June 6, 2018. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Under normal circumstances, I would have dismissed the tenant’s application **without leave to reapply** as the tenant did not attend the hearing to present the merits of their application; however, in this instance the landlord raised a jurisdictional matter which I will address below.

Preliminary and Procedural Matters

The first issue that I must decide is whether the *Act* has jurisdiction over the parties in order to proceed with the application.

The landlord referred to a previous decision from January 31, 2018, (“previous decision”) the file number of which has been included on the cover page of this

decision. In that decision, the landlord successfully argued that the tenant was not a residential tenancy and the arbitrator made such a finding on section 4(d) of the *Act* which states:

What this Act does not apply to

4 This Act does apply to

- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement.

[Reproduced as written]

In that decision the arbitrator wrote in part:

“...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.

...”

[Reproduced as written]

Analysis

Based on the above, and on a balance of probabilities, I find that while I am not bound by the previous decision I find that I agree with the decision made and also find that this matter is not related to a residential tenancy.

I find that section 4(d) of the *Act* applies and that the *Act* does not apply to this dispute as a result. As a result, I dismiss this matter due to lack of jurisdiction under the *Act*.

A copy of this decision will be sent by email to the parties as indicated in the tenant's application and confirmed by the landlord during the hearing.

Conclusion

The tenant's application is dismissed due to lack of jurisdiction under the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 6, 2018

Residential Tenancy Branch