



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Decision Codes: FFT, LRE, MNDCT, OLC, PSF

### **Introduction**

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$1500
- b. An order limiting or suspending the landlord's right to enter the rental property.
- c. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- d. An order that the landlord provide services or facilities required by law
- e. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on May 10, 2018.

### **Preliminary Matter:**

The landlord submits this is a commercial lease and the Residential Tenancy Act does not apply.

### **Background and Evidence:**

The rental property is part of a farm. There are two houses on the property which is lived in by other Tenants.

The tenant rented a large shed that has one side exposed to the elements. The shed contains an area for a workshop. It also contains an office with are some furniture.

On March 18, 2018 the parties signed a document that is titled Commercial Lease Agreement. It contained some 10 pages including the following:

- The premises includes the "inside shop area and large roof structure."
- The Premises will be used only for the following permitted use:

- The Tenant will be able to use as a working shop according to the bylaws of the City of Chilliwack. Neither the premises nor any part of the Premises will be used for any purpose other than the intended use.
- The base rent was set at \$1500 per month and there were additional costs
- The tenant will use and occupy the Premises only for the Permitted use and for no other purpose. The tenant will carry out the business under the name of ....
- The tenant covenants that the Tenant will carry on and conduct its from time to time carried on upon the Premises in such manner that comply with all statutes bylaws, rules and regulations of any federal, provincial, municipal or other competent authority and will not do anything on or in the Premises in contravention of any of any of them.
- The landlord has the right of distress.
- The tenant was to construct a hoist on the property.

The tenant moved a trailer onto the property and is residing in the trailer. The trailer is located under the large shed. He also brought a porta potti toilet onto the property.

The tenant's brother is living in the office.

The landlord presented evidence that the tenant brought a large number of cars for repairs (at times in excess of 20 cars). The landlord testified the

On May 4, 2018 the landlord served a Notice of End of Lease on the basis that the Tenant has breached a number terms of the Commercial Lease Agreement.

The tenant testified that the landlord told him it was a residential lease. He referred to a text he sent to the landlord stating that his main occupation is going into fixing classic and import of Japanese right hand drive cars and the landlord's response "...a small office inside but needs to be covered and a door to be installed. We'll do this according to requirements. Is this the right place for you. I mean its not a commercial area. Have no issues with you car repair business. How much are you looking to pay per month?

### Law

The definition of "rental unit" in section 1 of the Act is as follows: "rental unit" means living accommodation rented or intended to be rented to a tenant;

Section 2 of the Residential Tenancy Act provides as follows:

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.

Section 4 of the Act provides as follows:

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,

Policy Guideline 27 includes the following:

Commercial Tenancies

The RTA 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.

Generally, if the primary use is residential, the RTA will apply. For example, if a tenant rents a house to live in, and the house has a detached garage which the tenant runs a small yoga studio out of, the RTA probably applies.

If a tenant rents a shop and small living accommodation under a single agreement and the purpose for renting the property is to run a convenience store, the RTA probably does not apply even if the tenant lives in the accommodation.

An arbitrator may consider municipal by-laws including how the property is zoned in deciding whether the tenancy is primarily residential or commercial.

#### Analysis:

After carefully considering all of the evidence I determined that the Residential Tenancy Act does not apply and this was a commercial tenancy agreement for the following reasons:

- The leased premises are not accommodation and do not fit the definition of “rental unit.” The premises include a shop and a large open shed. It does not include a residence in which the Tenant was to live in. .
- The purpose of the tenancy was for the tenant to carry out his business of restoring classic cars.

- The tenancy agreement is a Commercial Tenancy Agreement. It states clearly that the premises are the shop and the large shed. The Commercial Tenancy Agreement states that the parties agree that no other uses are permitted.
- The form of tenancy agreement used by the parties is commercial in nature and includes a number of matters that are not permitted in a residential tenancy agreement.
- The fact that a tenant brings a trailer and a porta potti toilet onto the property does not convert this into a residential tenancy agreement.
- I do not accept the submission of the tenant that the landlord represented to him in the form of a text message that it could be used as a residence. The text messages states the property is not in a commercial area.

Conclusion:

In conclusion the agreement between the parties is a commercial tenancy agreement and the Residential Tenancy Act does not apply. As a result I declined to hear the application filed by Tenant as I determined that I do not have jurisdiction.

**This decision is final and binding on the parties.**

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: July 16, 2018

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Residential Tenancy Branch