



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, MNDCT, ERP, RP, PSF, LRE, OPT, LAT, RR, OLC, FFT

Introduction

This hearing dealt with the applicant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- disputation of rent increase, pursuant to section 41;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order for emergency repairs, pursuant to section 33;
- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65;
- an Order that the respondent's right to enter be suspended or restricted, pursuant to section 70;
- an Order of Possession for the applicant, pursuant to section 54;
- authorization to change the locks, pursuant to section 31;
- an Order directing the respondent to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the respondent, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The applicant testified that he personally served the respondent with the notice of dispute resolution package sometime between October 20-29, 2018. The respondent

confirmed receipt of the package on October 23, 2018. I find that the respondent was served with this package on October 23, 2018, in accordance with section 89 of the Act.

Preliminary Issue- Jurisdiction

Section 2 of the *Residential Tenancy Act* provides that the Act applies to tenancy agreements, rental units and other residential property although there are exempt living accommodations under provided under section 4 of the Act. At issue in this case is whether there is a tenancy or tenancy agreement between the parties for the subject property. The definition of a tenancy, under section 1 of the Act is: “a tenant's right to possession of a rental unit under a tenancy agreement”. The definition of tenancy agreement is, as provided in section 1: “means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit”.

Residential Tenancy Policy Guideline 14 states:

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.

The respondent testified that the parties initially entered into a commercial storage agreement whereby the respondent rented two sheds to the applicant. The respondent entered into evidence the storage agreement which, on its face, shows the signature of both parties and is dated May 19, 2014 (the “Storage Agreement”). The applicant testified that the signature on the Storage Agreement is not his and alleged that the respondent forged his signature.

The applicant testified that the property in question consists of over 30 acres of farmland on which a large barn is located and that he had an oral agreement with the respondent that he would pay rent on the land while he obtained the necessary permits from the city that he required for his farming venture. The applicant testified that once all the permits were obtained the respondent had agreed to partner with him in the farming venture. The applicant testified that in accordance with this oral agreement, he has invested approximately 1.5 million dollars into the subject rental property.

Both parties agree that they entered into a contract of purchase and sale for the property in question but that the sale did not complete. Each party blames the other party for the failure of the sale to complete.

Both parties agree that the applicant is currently living in a barn on the subject rental property. The respondent testified that the area the tenant is residing is a storage area. The applicant testified that it is a residential space initially intended for a security officer. The applicant testified that he is living at the subject rental property because he fears the respondent will damage his property. The applicant testified that he has an ownership stake in the property.

I find that the overarching nature of the agreement entered into by the parties, be it oral or written, is commercial in nature, not residential. The fact that the applicant is now living at the subject rental property does not change the nature of the arrangement between the parties and is ancillary to the main purpose of the contract. I am not satisfied that a residential tenancy agreement, whether written or oral, exists. On this basis, I find that I do not have jurisdiction to hear this matter.

Residential Tenancy Policy Guideline 27 provides information and policy statements with respect to living arrangements and/or agreements that may or may not fall under the Act, including the following section on page 5:

2. TRANSFERRING OWNERSHIP

A tenancy agreement transfers a landlord's possessory rights to a tenant. It does not transfer an ownership interest. If a dispute is over the transfer of ownership, the director does not have jurisdiction.

Pursuant to Residential Policy Guideline 27, as the applicant claims to have invested a large sum of money into the property, I find that the applicant may have an ownership interest and I therefore decline jurisdiction to hear this matter.

Conclusion

I find that I do not have jurisdiction to hear this matter.

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: November 30, 2018

Residential Tenancy Branch