



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAT, LRE, OLC, FF

Introduction

This hearing was convened in response to applications filed by both parties.

CS's application is seeking orders as follows:

1. To cancel a notice to end tenancy;
2. For authorization to change the locks;
3. To suspend or set condition on the landlord right to enter;
4. To have the landlord comply with the Act; and
5. To recover the cost of filing the application.

EW's application is seeking orders as follows:

1. To determine jurisdiction; and
2. If so to obtain an order of possession.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary matter and procedural matter

The first matter that I must determine is whether the Residential Tenancy Act (the "Act") applies to this matter.

Counsel for EW submits the Act does not apply to this matter, as it is commercial property. Counsel submits that EW is a tenant who rents the property under a commercial lease with the owner of the property and has a business license to operate

an art gallery on the commercial property. Counsel submits that EW is the tenant under the commercial lease and EW allowed CS to use one room to operate an office, not for a permanent housing.

CS does not deny that they rent a space from EW. CS does not deny EW rents the property under a commercial lease. CS confirmed that there is not written agreement to sublease the premises as a residential property.

In this matter, EW rents commercial property; the property is licensed as an art gallery. EW allowed CS to rent a room; however, that agreement is not a sublease agreement as a sublease agreement must be in writing, stating specific term that gives exclusive possession of the property.

That is not the case in this matter. I find it is not reasonable that CS would believe the Act would apply, as they are fully aware this is a commercial space and they do not have any agreement with the owner.

I find EW is the tenant under a commercial agreement and CS is an occupant under that agreement. I find the Act does not have jurisdiction over this matter. Therefore, I decline to hear the matter.

Conclusion

I decline to hear the matter due to 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: March 14, 2019

Residential Tenancy Branch