



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FFT, OLC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicant on April 02, 2019 (the "Application"). The Applicant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Applicant sought an order that the Respondent comply with the *Residential Tenancy Act* (the "*Act*"), *Residential Tenancy Regulation* (the "*Regulations*") and/or the tenancy agreement. The Applicant also sought reimbursement for the filing fee.

The Applicant filed two amendments. The first amendment relates to changing the Respondent's address. The second amendment added a claim for \$4,018.37 in compensation.

The Applicant appeared at the hearing. The Respondent appeared at the hearing with Legal Counsel. I explained the hearing process to the parties who did not have questions when asked. The Applicant and Respondent provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package, amendments and evidence and no issues arose.

The Applicant advised at the outset that he is no longer living at the rental unit but that some of his belongings are still there. During the hearing, the Applicant confirmed he is not wanting to return to the rental unit to live. The Respondent confirmed he has no issue with the Applicant attending the rental unit to collect the remainder of his belongings. The Applicant advised that his request for the Respondent to comply with the *Act*, *Regulations* and/or the tenancy agreement was originally a request to have the Respondent allow him to continue to reside at the rental unit.

The Respondent raised a preliminary issue in his materials about the jurisdiction of the Residential Tenancy Branch (RTB) to decide this matter. I addressed the jurisdiction issue at the outset.

### Preliminary Issue – Jurisdiction

Legal Counsel and the Respondent gave the following submissions and testimony.

The rental unit is a commercial warehouse used by both the Applicant and Respondent for storage. The warehouse is owned by a company. The business licence associated to the warehouse is for a storage facility.

The warehouse is 2,300 square feet. The Respondent uses the warehouse to store boat supplies and items he does not need. The Applicant used the warehouse for storage and garage sales. The Applicant restored items and sold them and used the warehouse to do this.

There is no written agreement between the Applicant and Respondent in relation to use of the warehouse. The Respondent originally rented a different building on the property to the Applicant for storage purposes. That building burned down. The Respondent then allowed the Applicant to use half of the main warehouse to store his belongings.

There is no electrical or water in the warehouse. There is no kitchen or washroom in the building.

At some point, the Applicant built himself a loft in the warehouse. At first, the Respondent thought this was a coffee break room. The Applicant then built a second loft. Both lofts were built without permits and without the consent of the Respondent. The lofts were not built in accordance with building code requirements. The loft area where the Applicant lived is 384 square feet.

The Respondent knew the Applicant lived in the lofts in the warehouse but “turned a blind eye to it” because the Applicant was helpful. The Applicant worked on boats and cleaned docks for the Respondent. The Applicant was also hired to conduct surveillance of the property.

The Applicant did not pay rent and instead did repairs and work in exchange for using the warehouse. There was never a security deposit paid.

The Applicant had extension cords running into the lofts. There was an inspection done and the Respondent received a letter telling him to remove the extension cords immediately. The fire department and city deemed the property unlivable. After a fire inspection, the Respondent was told to remove the lofts immediately and he did remove them.

The Respondent referred to photos of the warehouse and lofts submitted as evidence.

Legal Counsel pointed to the following comments in a letter from the city submitted as evidence:

The property is zoned as RQ-1 (...Residential Dwelling Districts) however our records indicate the property has a long history of being used for commercial purposes and as such is considered legal nonconforming. Be advised that any cessation of commercial use lasting for more than six months would result in loss of that legal nonconforming status. If you wish to continue commercial use of this property, residential use must cease and the storage building cannot be occupied as a dwelling. Alternatively, if you wish to use the property for residential purposes, you must cease using the property for commercial purposes. To clarify, only one use is permitted and they cannot be combined at this time.

Legal Counsel pointed to a case submitted about the jurisdiction of the RTB where premises are used for both commercial and residential purposes. Legal Counsel submitted that the RTB does not have jurisdiction in this matter pursuant to section 4(d) of the *Act*.

The Respondent submitted business licenses from 2016, 2017 and 2018 showing the company that owns the warehouse had licenses to carry on business at the location as a storage facility.

The Respondent submitted a contract of purchase and sale for the property indicating it was sold as commercial real estate.

The Applicant testified as follows.

He had lived at the warehouse since 2001. The agreement between the Applicant and Respondent from the outset was that the Applicant could store his belongings and live at the warehouse.

He did not build the lofts. Someone else did at the direction of the Respondent. It is not true that the Applicant built the lofts without the consent of the Respondent or that the Respondent simply turned a blind eye to it.

He did have a fridge, stove and microwave set up. He also had a toilet although it was not flushable. He installed taps outside of the warehouse and so there is water to the property. There is no proper electrical wiring in the warehouse. He used extension cords.

He did store items in the warehouse that he refurbished and sold. He did refurbish and sell items from the property. Of the items previously in the warehouse, 40% were his personal belongings and 60% were items he planned to refurbish and sell. There was an additional building in the back of the warehouse that he was using to store items and refurbish them.

He never paid a security deposit. He did pay rent from 2001 to 2002. Since 2002, he has not paid rent and instead has worked for the Respondent in exchange for use of the warehouse.

He agrees the city and fire department deemed the warehouse unlivable in April of 2019.

The hearing proceeded for more than an hour. I told the parties the following. We would adjourn the hearing and I would decide the jurisdiction issue. If my decision is that the RTB has jurisdiction, I will reconvene the hearing. If my decision is that the RTB does not have jurisdiction, this would be the end of the matter as I would have no authority to decide the issues raised in the Application and amendments. Both parties were agreeable to this process.

## Analysis

Pursuant to section 2 of the *Act*, the *Act* applies to tenancy agreements, rental units and other residential property. The definitions of tenancy agreements and rental units are set out in section 1 of the *Act* which states:

"rental unit" means living accommodation rented or intended to be rented to a tenant;

"tenancy agreement" 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;

[emphasis added]

Section 4(d) of the *Act* states that the *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 14 and 27 address commercial tenancies. Policy Guideline 27 states:

### 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.

I accept that the warehouse is predominately used for commercial purposes as a storage facility. I accept that the Respondent uses half of the warehouse to store items as the Applicant did not dispute this. Further, the Applicant testified that 60% of his half of the warehouse was used to store items he intended to refurbish and sell.

The finding that the warehouse is predominately used for commercial purposes is supported by the documentary evidence including the business licences showing it is licenced as a storage facility, contract of purchase and sale showing it has been sold as commercial real estate and the letter from the city showing the warehouse has a long history of being used for commercial purposes.

I also find it more likely that the Respondent rented the warehouse to the Applicant as a storage facility and not as living accommodation given the following.

I accept that there was no living space at the outset. The parties disagreed about who built the lofts; however, I did not understand the Applicant to dispute that the lofts were built after the parties entered the agreement about use of the warehouse.

I accept the testimony of the Respondent that there was no kitchen or washroom at the outset as I understood the Applicant to testify that he set up a kitchen and washroom himself. I also accept that there is no water or electrical set up in the warehouse. I acknowledge that the Applicant used electrical cords and installed a tap outside of the warehouse; however, this is not the equivalent of the warehouse being set up with electrical and water as would be expected in living accommodation. The Applicant acknowledged that he did not have a flushable toilet which would be expected in living accommodation.

The parties agreed the city and fire department deemed the space unlivable in April of 2019.

In these circumstances, I accept that the Respondent did not intend to rent the warehouse to the Applicant as living accommodation.

Further, the Applicant has not paid rent since either 2001 or 2002 according to the parties. The parties agree no security deposit was paid. These factors support the Respondent's position that the warehouse was not intended to be rented as living accommodation.

The Applicant has not pointed to any documentary evidence in support of his position that the Respondent rented the warehouse to him as storage and living space.

In these circumstances, I am not satisfied there was ever a tenancy agreement created between the parties. I am not satisfied the Respondent rented living accommodation to the Applicant. The evidence supports that the Respondent rented storage space to the Applicant. The *Act* does not apply to space rented for storage purposes.

Further, I am satisfied the warehouse is predominately used for commercial purposes as a storage facility and therefore the *Act* does not apply pursuant to section 4(d) of the *Act*.

### Conclusion

I find that the *Act* does not apply and therefore I have no jurisdiction to decide this matter. Given this, the hearing will not be reconvened.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 22, 2019

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Residential Tenancy Branch