



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNC, OLC, FFT

### **Introduction**

This hearing was convened in response to an application disputing a landlord's Notice to End for Cause, and an Order for the landlord to Comply with the Act and recover the filing fee. The teleconference hearing was attended by the applicant and the respondent with their legal representative. The respondent (the landlord) acknowledged service of the application and evidence of the applicant (the tenant). The landlord acknowledged not providing any document evidence in this matter. The parties were given full opportunity to present all relevant evidence and relevant testimony in respect to the application and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties were further provided opportunity to mutually resolve their dispute to no avail.

#### *Preliminary matters – style of cause, jurisdiction*

The tenant applied to cancel a Notice for Cause however it is clear they are disputing a general Notice to End Tenancy purportedly for the landlord's use (a letter from the landlord informing the tenants to vacate dated March 22, 2019), and I accept this change.

Landlord's counsel argued that the tenancy of this matter is a *commercial tenancy* and therefore I do not have jurisdiction to determine the matter under the *Residential Tenancy Act* (the Act). The landlord cited **Section 4(d)** of the Act in respect to the Act not applying to this matter, which states, in its part,

**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*

The tenant argued they currently rent commercial space within which they currently reside and occupy as living accommodation therefore the Act should apply.

*I heard the parties' respective submissions regarding the matter of jurisdiction .*

The landlord testified that the tenant originally occupied the rented unit in 2004 for solely commercial purposes in which they operated a ``healing business``. I do not have benefit of the contractual commercial agreement or lease in this matter. The rented unit consisted of 2 rooms and separate men`s and women`s washrooms all situated within a commercial property. The tenant did not dispute the estimation of approximately 150 square feet of space of the rented unit. The landlord testified they have always regarded the tenancy as a commercial tenancy from the outset of its use in 2004. They testified that they have not closely devoted attention to the rented unit however know that the tenant still receive persons as visitors to their business or service, which the tenant characterized as ``a ministry``, in which individuals receive `` health`` services by donation. It was undisputed that up to a year ago the entrance of the rented unit displayed signage for their service, but no longer. The tenant testified they normally receive approximately a handful of visitors per week to their ministry in the rented unit.

The tenant testified that at the outset of the commercial lease they would sometimes stay in the rented unit but did not routinely use it as their residence or living accommodation. In May of 2013 they began permanently residing in the rented unit and

it is undisputed they received permission from the landlord to install a bathtub. The tenant testified they currently have a refrigerator, beds, and also described having a living room. The tenants provided evidence that they are known by others to reside in the rented unit and that the local government zoning/bylaw permits the configuration of the unit on the commercial property for residential use. The tenant cited Residential Policy Guidelines respecting Jurisdiction (27) and Commercial and Residential types of tenancies (14) in support that their rented unit is residential in nature and their sole residence, albeit occasionally used to accommodate their ministry's business.

On preponderance of the evidence I find that approximately 6 years ago the tenants began regarding the rented unit as living accommodation and residing in it. I accept the landlord authorized the installation of a bathtub in 2013 however the parties did not provide reasons for the occurrence, therefore I do not assign to it significant evidentiary weight. None the less, in the absence of the parties' express agreement for the rented unit, I accept their agreed testimony that the parties' original contractual agreement and intent in 2004 was to permit possession of the rented unit for a commercial use and business purposes; and which under the sole agreement did not include living accommodation. While I accept that the tenants turned the commercial space into more than contractually agreed and that its configuration might be accepted by the local government for residential use, the contractual relationship of the parties has not changed from that of a commercial tenancy relationship limited to business purposes. I am not satisfied by the evidence that the parties ever entered into a tenancy agreement, whether written or oral, express or implied respecting possession of a rental unit as living accommodation. As a result of all the above, I find the rented unit of this matter is not supported by a tenancy agreement for a residential tenancy and that a residential tenancy exists between the parties. Therefore, **I decline jurisdiction** in this matter and the application is effectively dismissed without leave to reapply.

### **Conclusion**

The application is dismissed for lack of jurisdiction.

**This Decision is final and binding.**

*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: May 08, 2019

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Residential Tenancy Branch