



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding P & P FARM LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNDCL-S MNRL-S**

Introduction

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

- Authorization to recover the filing fees from the tenant pursuant to section 72;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:50 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing represented by property manager, ML ("landlord"). The landlord testified that she sent each of the tenants their own respective Notice of Dispute Resolution Proceedings package by registered mail on May 4, 2019. Tracking numbers for the mailings are provided on the cover page of this decision. The landlord testified the packages were sent to the addresses provided on the condition inspection report signed by the tenant at the conclusion of the tenancy, provided as evidence in this proceeding. I find that the tenants deemed served with the packages on May 9, 2019, five days after being sent by registered mail in accordance with sections 89 and 90 of the Act.

The landlord testified she sent evidence to the tenants by registered mail on July 8, 2019. The tracking number for that mailing is also provided on the cover page of this decision. In accordance with sections 88 and 90 of the Act, the evidence is deemed served on July 13, 2019.

Preliminary Issue

Neither the *Residential Tenancy Act* nor the *Manufactured Home Park Tenancy Act* applies to a commercial tenancy. Residential Tenancy Policy Guideline PG-14 [Type of Tenancy: Commercial or Residential] indicates 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.

Section 4(d) of 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 landlord testified that the subject property is six acres of farmland which includes a house measuring approximately 2000 square feet. The landlord testified that the subject property is zoned as farmland, not residential, and that part of the agreement between the parties was that the tenant would be required to grow produce in order for the landlord to qualify for a “farmland” tax exemption.

In the addendum to the tenancy agreement filed by the landlord, the following conditions are noted:

- The landlord reserves the right to rent a portion of the land to a potential vegetable grower and tenant agrees to allow entrance to the land
- ...
- Tenant acknowledges that this property qualifies as farm status for Taxation purposes and the tenant agrees to the sale of produce of not less than \$3,000.00 per year.

The mutual agreement signed March 23, 2018 contains the following conditions:

By the end of September 2018, the tenant agrees to provide sales receipts to the owner, so the subject property could meet the requirement for farm property tax.

- If vegetable production is on land over 2 acres, the tenant will provide a receipt in the amount of \$3,000.00 minimum;
- If vegetable production is on a land less than 2 acres, the tenant will provide a receipt in the amount of \$10,000.00 minimum.

Further, the landlord seeks compensation because the tenant has built additional green houses on the farm land outside the contract, causing material damage to the farm land and existing building. Lastly, the landlord has provided photographs of the subject property which depicts several acres of non-residential use land for which the landlord seeks compensation for damages.

Given the above facts, I am satisfied the “predominant purpose” of the premises is commercial and not residential. I find the tenants were living in living accommodations included with premises that are primarily occupied for business purposes and are rented under a single agreement. Pursuant to section 4(d) of the *Residential Tenancy Act*, the *Act* does not apply to this tenancy agreement and I decline jurisdiction in this matter.

Conclusion

I decline to rule on this matter as I have no jurisdiction to consider this application.

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 30, 2019

Residential Tenancy Branch