



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, FFT, LRE, OLC, RP

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue – Jurisdiction

At the outset of the hearing, the respondent raised the issue that the matter should not fall under the jurisdiction of the Residential Tenancy Branch as this is a retail/commercial unit. The respondent testified that the unit does not have a kitchen, dining room or bedroom and does not have an occupancy permit. The respondent testified that he used the RTB's forms for a residential tenancy agreement out of convenience but realized that was an error. The respondent testified that the applicant has had advertisement for business purposes posted on the building face and unit windows for several years and that's what he's using the unit for.

The applicant testified that the agreement was to be for five years. The applicant testified that the idea was it was going to be for business with a residential component to it, however the business never materialized and that it should be classified as a residence.

Analysis

The respondent submitted documentation from the Township of Langley that shows the zoning for this unit in this building is retail/commercial and not for residential use. In addition, the respondent provided documentation to show that the applicant is using this unit primarily for business purposes. I am satisfied that the applicant is using this unit for business purposes and I am also satisfied that this is a retail/commercial unit not suitable or appropriate for residential use.

Section 4 of the Act addresses the issue before me as follows:

What this Act does not apply to

- 4** This Act does not apply to
 - (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
 - (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
 - (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,
 - (d) living accommodation included with premises that

(i) are primarily occupied for business purposes, and
(ii) are rented under a single agreement,

In light of the above, it is my determination that the Applicant and Respondent have no rights or obligations to each other under the *Residential Tenancy Act* and therefore I do not have jurisdiction to resolve a dispute between the parties.

Conclusion

I HEREBY DECLINED TO HEAR this matter, for want of jurisdiction and the application is dismissed, without leave to reapply.

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 15, 2019

Residential Tenancy Branch