



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord"), the tenant, and the tenant's English language translator attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had permission to speak on behalf of the landlord named in this application. The tenant confirmed that her translator had permission to assist her at this hearing. This hearing lasted approximately 16 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the Act, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

Preliminary Issue – Jurisdiction to hear Matter

Both parties agreed to the following facts. The tenant did not live at the rental unit during this tenancy; she lived at another unit separate from the rental property. The tenant rented the rental unit in order to operate a daycare business and her staff was occupying the unit for that purpose.

The landlord maintained that as per the parties' written tenancy agreement, the tenant was required to obtain third party liability insurance coverage for her daycare business. She stated that I did not have jurisdiction to hear this application.

The tenant maintained that I did have jurisdiction to hear this matter. She claimed that she was operating a home-based business and the rental property is zoned for residential purposes. She said that her staff lived at the unit so it was for residential use.

Section 4(d) of the *Act*, outlines a tenancy in which the *Act* does not apply:

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,

I find that this application is excluded by section 4(d) of the *Act* as the rental unit was primarily occupied for business purposes and rented under a single agreement. There is only one written tenancy agreement. The tenant did not live in the rental unit; she lived in a unit separate from the rental property. The tenant operated a daycare business at the rental unit and she and her work staff occupied it primarily for that purpose. The written tenancy agreement states that the tenant is required to purchase commercial general liability insurance before starting her childcare business.

For the above reasons, I find that this is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the tenant's application. I informed both parties of my decision verbally during the hearing.

I notified the tenant that she could pursue any claims at the Provincial Court of British Columbia or the Supreme Court of British Columbia, if she wished to do so.

Conclusion

I decline jurisdiction over the tenant's application. I make no determination on the merits of the tenant's application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent 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: July 22, 2019

Residential Tenancy Branch