



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR MNR FF

Introduction

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

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

This application was originally heard by way of a Direct Request Proceeding and on April 15, 2016 an interim decision was issued adjourning the application to be reconvened at a participatory hearing as an issue of jurisdiction arose on review of the application.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:20 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on July 26, 2019, a copy of the Application for Dispute Resolution including the Notice of Hearing and Interim Decision was served personally to the tenant by the property manager J.B. and witnessed by the assistant property manager L.K.

Based on the above evidence, I am satisfied that the tenant was served with the Application for Dispute Resolution, Notice of Hearing and Interim Decision pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Issues

Do I have jurisdiction under the Act to make a decision on the application before me?

If yes, is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The parties entered into a residential and commercial lease agreement on December 5, 2014. A copy of the written agreement was provided on file. The landlord testified that the rental unit is within a commercial building. The landlord testified the tenant leases both the lower commercial unit and the residential space on top of the commercial unit. The landlord submits the unit is primarily occupied for commercial purposes as the tenant operates an auto repair shop from the commercial unit.

Analysis

Section 4(d) of the *Act* stipulates 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,

I find I do not have jurisdiction to hear this matter as the rental unit is primarily occupied for commercial purposes and the commercial and living accommodations were rented under a single agreement.

Conclusion

The landlord's application is dismissed without leave to reapply due to lack of 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: September 23, 2019

Residential Tenancy Branch