



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, FFT, MNDCT

Introduction

This hearing dealt with the cross applications pursuant to the *Residential Tenancy Act* ("Act") SM applied for :

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

AP and AY applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. 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 – Does the Branch have Jurisdiction?

At the outset of the hearing the parties both confirmed that AP and AY ran a day care out of the home. The parties also confirmed that there was only one single agreement to address this arrangement. There is no clear division of what the tenancy terms and agreement are versus the business agreement to allow the tenants to run their daycare.

In addition, many of the disputes submitted by the parties directly references the operation of the daycare. AY and AP testified that the “main” reason they chose this home was so that they could run their daycare as that was their primary motivation.

Analysis

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
 - (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,

Based on the above I find that this does not dispute falls under the Residential Tenancy Act.

Conclusion

I decline jurisdiction to hear this matter; accordingly, both applications are dismissed in their entirety 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: October 28, 2019

Residential Tenancy Branch