



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the Applicants' Application for Dispute Resolution, made on June 25, 2019 (the "Application"). The Applicants applied for the following relief, pursuant to the Residential Tenancy Act (the "Act"):

- a monetary order for damage and compensation;
- an order that the Landlords return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Applicant and the Respondent attended the hearing at the appointed date and time and provided affirmed testimony.

The Applicant testified that she served her Application and documentary evidence package to the Respondent by registered mail on July 25, 2019. The Respondent confirmed receipt. The Respondent testified that he served the Applicant with his documentary evidence by registered mail on September 16, 2019. The Applicant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters – Jurisdiction

At the start of the hearing, the Respondent stated that the Residential Tenancy Act should not apply to this tenancy as it was a commercial agreement between the parties. The Applicant stated that her understanding at the start of the tenancy was that she would rent a house, and two suites on the same rental property from the Respondent under one agreement.

The Applicant stated that the agreement between the parties was that the Applicant would be permitted to operate her business of housing children under contracts and staff the residences with paid house parents who would be responsible for providing care and supervision for the children. The Applicant stated that she has never lived at the residences and there was never an intention that she would occupy the rental units.

The Respondent stated that the agreement was for business purposes and that he had agreed that the Applicant could run her business of housing children in care as well as staff members on the rental property. The Respondent confirmed that the Applicant never resided on the rental property.

Analysis

After considering the testimony from the parties, and reviewing the documentary evidence provided, I find the first issue I must address, prior to considering the merits of the Application, is whether I have the jurisdiction to hear this matter under the *Act*. Section 4 of the *Act*, as well as Section 27 of the Residential Tenancy Policy Guidelines (the “Policy Guidelines”) state that the *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 accept that the parties agreed that the rental agreement was made with the understanding that the rental property would be used for business purposes and that the Applicant never intended, nor has ever occupied the rental units. I accept that the rental property was used only by clients and staff members. In determining whether I have jurisdiction to hear this application, Policy Guideline 14 states that I must consider what the “predominant purpose” is for the use of the premises. I have considered that

the parties' testimony specifically indicates that the premise is primarily occupied for business purposes.

As such, I find the "predominant purpose" of the use of the premises is commercial in nature, and is not considered a residential tenancy, under the *Act*.

Conclusion

I decline to proceed due to a lack of jurisdiction, and the application is dismissed without leave to reapply. The parties should seek legal advice from their respective lawyers as to how to resolve this dispute.

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 04, 2019

Residential Tenancy Branch