



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RELIANCE PROPERTIES
LTD and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes RR, FFT

Introduction

On June 19, 2019, the Tenant applied for dispute resolution under the *Residential Tenancy Act* ("the Act") seeking the following relief:

- to allow the Tenant to deduct the cost of repairs, services or facilities agreed upon but not provided from the rent.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. The Tenant and Landlord were present at the hearing. The Tenant was assisted by legal counsel. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

Preliminary and Procedural Matters

The Tenants counsel attended the hearing late due to a telephone connectivity issue. The Tenants counsel was provided with a summary of what had already transpired in the hearing.

The Landlord and Tenant testified that the tenancy began on May 1, 2018, as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$4,648.00. is due to be paid to the Landlord on the first day of each month. A security deposit of \$2267.50 was paid by the Tenant to the Landlord.

At the start of the hearing, the Landlord testified that the Tenant is renting two separate rental units on the property. The Landlord testified that the Tenant and Landlord participated in a dispute resolution hearing one hour earlier where the Arbitrator found that the dispute does not fall under the jurisdiction of the Act.

The Tenant, Mr. D.M. testified that he is not living in the rental unit. He testified that he is the principal owner of a marketing company that work out of the unit.

The Tenants legal counsel submitted that the parties intended to enter into a residential lease notwithstanding the actual purpose that it is used for.

The Tenant had a witness, Mr. M.C provide testimony. Mr. C.N. testified that there are 35 employees working out of the unit. He provided testimony that loss of use of the elevator impacted the employees.

In reply, the Landlord testified that the rental unit was rented as a residential unit and that the Tenant signed an addendum that provides there is no subletting permitted. The Landlord testified that the Landlord is not responsible for any losses experienced by the Tenants employees working in the residential unit.

The Tenants legal counsel submitted that this is a contract for use and access of the unit and if the Landlord cannot provide a service then the Landlord should pay compensation.

Section 4 of the Act provides that the Act does not apply to living accommodation included with premises that:

- are primarily occupied for business purposes, and
- are rented under a single agreement,

Residential Tenancy Branch Policy Guideline # 14 Type of Tenancy is intended to help the parties to an application understand issues that are likely to be relevant. The guideline provides the following information:

Sometimes a tenant will use a residence for business purposes or will live in a premises covered by a commercial tenancy agreement. The Residential Tenancy Act provides 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. To determine whether the premises are primarily

occupied for business purposes or not, an arbitrator will consider what the “predominant purpose” of the use of the premises is.

I find that the parties entered into a tenancy agreement for a residential unit; however, I find that the Tenant, Mr. D.M. uses the rental unit for a business purpose. Mr. D.M. testified that he does not live in the rental unit and he runs a marketing company from the unit. Mr. M.C. testified that 25 employees work out of the rental unit.

I find that the rental unit is primarily occupied for business purposes. I find that the Act does not apply to living accommodation that is primarily occupied for business purposes and is rented under a single tenancy agreement.

The Tenants application for compensation due to a loss of services or facilities is dismissed without leave to reapply. The Act does not apply to the accommodation which is occupied for business purposes.

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: March 23, 2020

Residential Tenancy Branch