



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF FFT

Introduction and Analysis

This hearing was convened as a result of the applicant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The applicant has applied for an order under the Act for the respondent to provide services or facilities agreed upon but not provided and to recover the cost of the filing fee.

The applicant, the respondent and the husband of the respondent attended the teleconference hearing. The parties were affirmed. During the hearing, the applicant confirmed the previous file number of a decision dated January 24, 2020 (previous decision), the file number of which has been included on the style of cause of ease of reference.

The applicant stated that the previous decision the arbitrator determined that the Residential Tenancy Branch (RTB) found that there was jurisdiction to hear the previous dispute, which I find is incorrect. In fact, the previous decision states on the final page of the decision the following:

Conclusion

As the issue of jurisdiction is not clear, I dismiss this Application with 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*.

Based on the above, and considering that neither party submitted a copy of a tenancy agreement for my consideration, I have considered the previous decision which reads on page 2 the following:

A copy of a “Commercial Lease Agreement” was submitted as documentary evidence; however, it was not signed. The Tenant advised that she “believes” she signed this commercial lease and made references to terms in this agreement that the Landlords were not complying with, but she contrarily “believes” that the *Act* has jurisdiction over this tenancy.

Based on the above, section 4(d) of the Act applies and states:

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,**
- [Emphasis added]

Based on the above, I find the applicant has provided insufficient evidence to support that a tenancy agreement under the Act exists between the parties. In addition, the January 24, 2020 decision confirmed that jurisdiction is not clear and I find that by failing to provide a copy of a tenancy agreement, the applicant has failed to provide sufficient evidence for a determination to be made to support that I have jurisdiction to hear this dispute. Based on the above, I am not satisfied that I have jurisdiction to hear this dispute.

As the application has been refused, I do not grant the filing fee.

Conclusion

The application has been refused due insufficient evidence to support that I have jurisdiction to hear this dispute in accordance with section 4(d) of the Act.

The filing fee is not granted as noted above.

This decision will be emailed to both parties at the email addresses confirmed during the hearing.

I grant the tenant leave to reapply if the tenant can provide a copy of the tenancy agreement and provide sufficient evidence to support that the tenancy agreement is a residential tenancy agreement and not a commercial tenancy agreement.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 16, 2020

Residential Tenancy Branch