



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding G.S. Kang and Sons Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNETC, MNDCT, FFT**

Introduction

This application was filed pursuant to the *Residential Tenancy Act* ("the Act"). The applicant seeks:

- Compensation from the respondent related to a Notice to End Tenancy for Landlord's Use of Property pursuant to sections 51 and 67;
- A monetary order for damages or compensation pursuant to section 67; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The applicant attended the hearing and the respondent was represented at the hearing by an agent, JD. As both parties were present, service of documents was confirmed. The respondent acknowledged service of the applicant's Application for Dispute Resolution and stated she had no concerns with timely service of documents. The applicant stated he just received the respondent's single piece of evidence two days prior to the hearing, by email. The respondent acknowledged it was sent late because she had COVID-19 and was unable to attend at the post office and that the evidence was just received recently. I excluded the respondent's evidence as the respondent did not serve the evidence at least 7 days before the hearing in accordance with rule 3.14 of the Residential Tenancy Branch Rules of Procedure.

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

No copy of a tenancy agreement was provided as evidence. The applicant provided a statement in place of the tenancy agreement which reads:

I entered into this Rental Agreement on March 1, 1990, 30 years ago, and have never had a copy, to my knowledge. I am the longest tenant in this building by many years, and it has sold 3 times since I have been there.

The original Agreement was that this is a storage space, not a living space, although in the intervening years, a former landlord installed a bathroom and smoke detectors. I use this space for self-employed business effect storage (I am a stage, film and TV performer), as I live on Bowen Island, and must have storage for these items on the mainland. I cannot provide the rental document, but the current Landlord will have a copy to present.

The applicant testified that his unit is not a living unit. It was once part of a larger unit that was severed off to become a storage unit. His primary use of the space was for storage. The unit is a large room in the back of the building below grade. The applicant states there are no cooking facilities in the unit although it does have a bathroom.

The applicant testified he lives on Bowen Island, where he maintains his residence. The unit before me for this hearing is a place to store goods and if he has an acting "gig" on the mainland, he may sleep a night in the storage unit to accommodate the ferry schedule. The applicant testified he may sleep a total of 20 nights a year in the storage unit.

Analysis

Section 2 of the Residential Tenancy Act states:

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

Section 1 of the Act defines a rental unit as follows:

"rental unit" means living accommodation rented or intended to be rented to a tenant;

Black's Law Dictionary, sixth edition, defines a residence as: A place where one actually lives or has his home; a person's dwelling place or place of habitation; an abode; house where one's home is; a dwelling house.

In this case, the applicant clearly testified his residence is on Bowen Island, that the unit he rented from the respondent was a place to store his effects when he had acting “gigs” on the mainland. The unit was, as acknowledged by the applicant, a storage facility, not a living accommodation.

I find that the space rented by the parties does not fall within the criteria of a living accommodation or a rental unit as defined by the *Residential Tenancy Act*. The space being rented was not a residence, as the applicant clearly indicated his residence was on Bowen Island. I therefore find the agreement between the parties is not a residential tenancy and that the *Residential Tenancy Act* does not apply. Pursuant to sections 62(1)(b) of the *Act*, I find I do not have the authority to resolve this matter as it does not arise under the *Residential Tenancy Act*.

Conclusion

Pursuant to sections 62(1)(b), the Director does not have the authority to determine this matter as it does not arise under the *Residential Tenancy Act*. Jurisdiction is declined.

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: May 12, 2021

Residential Tenancy Branch