



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, MNDCT, LRE**

Introduction

This hearing dealt with an application filed pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- A monetary order for damages or compensation pursuant section 67; and
- An order for the landlord to comply with the *Act*, regulations or tenancy agreement pursuant to section 70.

The applicant ZJ attended the hearing and advised he was also acting as agent for the co-applicant, HS. The respondent attended the hearing and was represented by his counsel, DY and an interpreter, GW.

Preliminary Issues

The respondent’s counsel advised me that the respondent was not served with the notice of Dispute Resolution Proceedings. The respondent found out about the hearing after being told by unauthorized occupants on the subject property that a dispute resolution had been filed. The respondent obtained a copy of the Notice of Dispute Resolution Proceedings directly from the Residential Tenancy Branch sometime after October 20th.

The tenant ZJ advised me that he thinks the Notice of Dispute Resolution Proceedings package (“notice”) was served by the other named applicant HS by leaving a copy of it at the respondent’s door. HS was not present at the hearing to provide oral proof of service of the notice or any of the applicant’s evidence. The respondent’s counsel advised that he did not object to proceeding with the hearing despite not being served with the Notice of Dispute Resolution Proceedings. The respondent did, however, dispute the admittance of the applicant’s evidence for consideration in my decision.

As the applicant was unable to prove to me that his evidence was served upon the respondent, I ruled that the applicant's documentary evidence would be excluded from consideration in this decision. From the applicant, I would only accept oral testimony.

The applicant acknowledges receiving the respondent's evidence and as such, all the respondent's documentary evidence was allowed.

The respondent's counsel sought permission to record the proceedings, indicating a transcript of this hearing might be used in the Supreme Court for a pending action. Pursuant to rule 6.11 of the Residential Tenancy Branch Rules of Procedure, the request to record can only be allowed by Rule 6.12 which **requires** the party requesting the recording make a written request to the Residential Tenancy Branch and state the reasons for requesting to the other party not less than seven days before the hearing. As the respondent did not follow the requirements under Rule 6 of the Rules of Procedure, the request to record the hearing was denied.

The respondent's counsel argued that the director of the Residential Tenancy Branch does not have jurisdiction to make a decision due to relationship between the parties because the applicants are covenantors to an agricultural lease. They are not tenants. The applicant makes a similar argument, pointing to section 4(f) of the *Residential Tenancy Act* which states that the *Act* does not apply to living accommodations included with premises that are primarily occupied for business purposes and are rented under a single agreement.

Issue(s) to be Decided

Does the *Residential Tenancy Act* apply to the agreement between the parties?

Background and Evidence

A copy of the lease agreement was provided. In the lease agreement, (the "agreement") the respondent is named as a landlord, a corporate entity is named as the tenant and the applicants in this proceeding are named as covenantors. Clause 1 of the agreement states the tenant is to pay \$18,500.00 plus GST to the landlord from January 22, 2021 to January 21, 2027.

Clause 2(i) of the agreement [tenant's covenants] states that:

*the tenant covenants with the landlord to use the leased premises only for operating as **Agricultural Use** and not to carry on or permit to be carried on any other trade or business and not to omit or permit to be done or omitted upon the leased premises anything which shall cause the insurance rate*

assessed against the building to be increased without first obtaining the written consent from the landlord any increase in the insurance rates as a result of the business or trade carried on by the tenant shall be wholly paid by the tenant. The tenant must provide the landlord with proof of permits within three days upon the request of the landlord.

Respondent's counsel submits that the commercial lease between the respondent/landlord and the corporate tenant has already been terminated. After terminating the lease, counsel discovered that there are unauthorized occupants "living" at the accommodation who are not tenants. The unauthorized occupants are not party to this proceeding.

The respondent testified that his son downloaded a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities from the internet, had the landlord sign it and served it upon the applicants in late July 2021. He retained counsel after serving the Notice and failed to advise counsel that he had served the notice to end tenancy. During the hearing, the respondent sought to withdraw the notice to end tenancy given that the director of the Residential Tenancy Branch does not have the jurisdiction to render a decision. The applicant agreed that the notice to end tenancy should be withdrawn.

The applicant advised me that it is his understanding that section 4(f) renders the director of the Residential Tenancy Branch ineligible to render a decision between the parties. In light of this, the applicant withdrew his application for a monetary order and an order that the landlord comply with the *Act* because he would bring an application forth in the Supreme Court.

Analysis

I have taken into consideration the "lease agreement" which states that the tenant covenants with the landlord to use the leased premises only for operating as **Agricultural Use**. I accept the submission of both the applicant and the respondent that the *Act* does not apply to this living accommodation. Based on the evidence before me, I find that the living accommodation included with the premises [the leased land] is primarily occupied for business purposes and are rented under a single agreement. As such, the *Residential Tenancy Act* does not apply to this living accommodation pursuant to section 4(f). I do not have the jurisdiction to render a decision in this matter.

Conclusion

Pursuant to section 4(f), the *Residential Tenancy Act* does not apply to this living accommodation. Jurisdiction to render a decision 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: November 26, 2021

Residential Tenancy Branch