



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES
and [Applicant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, FFT

Introduction

On February 21, 2022, the Applicant made an Application for Dispute Resolution seeking an Order of Possession pursuant to Section 54 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Applicant attended the hearing. A.M. and K.H. attended the hearing as agents for the Respondent. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all in attendance provided a solemn affirmation.

The Applicant advised that the Notice of Hearing and evidence package was served to the Respondent on March 4, 2022 by hand. K.H. confirmed that the Respondent received this package, but did not receive any audio file as evidence. Based on this undisputed evidence, I am satisfied that the Respondent has been duly served the Applicant’s Notice of Hearing and documentary evidence package. As such, I have accepted this documentary evidence and will consider it when rendering this Decision. However, as the Applicant did not serve the audio file at the time of making the Application, or submit it to the Residential Tenancy Branch, as per the Rules of Procedure, I have excluded this audio evidence and will not consider it when rendering this Decision.

K.H. advised that the Respondent's evidence was served to the Applicant on March 17, 2022 by registered mail. The Applicant confirmed that he received this evidence and he stated that he was prepared to respond to it. As such, I have accepted this documentary evidence and will consider it when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Applicant entitled to an Order of Possession?
- Is the Applicant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the most current tenancy agreement started on October 1, 2021 for a fixed length of time ending on March 31, 2022. Rent was established at \$3,000.00 per month and was due on the first day of each month. A security deposit of \$1,500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Applicant advised that he rents properties and then re-rents them out on Airbnb as a business venture. He claimed that the rental unit was his primary residence; however, he then contradictorily stated that he lived in the rental unit until September 20, 2021 and that he then re-rented it to someone else on Airbnb effective the same date. He submitted that he was seeking an Order of Possession because the Respondent ended his tenancy and signed a new tenancy agreement with this new occupant.

He stated that the Respondent served him a One Month Notice to End Tenancy for Cause (the "Notice") by posting it to the rental unit door on January 13, 2022 and that the person that he rented the unit to informed him of this Notice on that date. He then stated that the Respondent emailed him a copy of this Notice on January 19, 2021. The

Applicant did not dispute the Notice within the required timeframe, and he stated that he was unsure if this tenancy fell under the jurisdiction of the *Act*. However, he stated that he filed this Application to protect himself. He acknowledged that at the time he signed the tenancy agreement, he was of the understanding that the *Act* did not apply to his tenancy.

A.M. advised that the Applicant was being untruthful about using the rental unit as his primary residence, and he referenced documentary evidence to support the position that the Applicant never lived in the rental unit. He submitted that the rental unit was rented to the Applicant as a vacation or travel accommodation, that this was a commercial agreement between the parties, and that the *Act* does not apply to this tenancy.

With respect to the Notice, he confirmed that the Notice was served to the Applicant despite the Respondent's position that the *Act* did not have jurisdiction over this tenancy. He stated that this was done as a cautionary measure because it has been determined in the past that similar tenancies that the Respondent has engaged in have been determined to fall under the purview of the *Act*. He confirmed that a new tenancy agreement was signed with the occupant of the rental unit, which in his opinion ended the Applicant's tenancy. When he was asked why he did not apply for an Order of Possession based on the Notice if it was his position that it was necessary to use the Notice in the first place, he advised that he did not apply because of the belief that the *Act* was not applicable to this tenancy.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

When reviewing the totality of the evidence before me, and after hearing testimony from both parties, as both the Applicant and Respondent agreed that at the time the agreement was signed, it was both their understanding and position that the *Act* did not apply to this particular tenancy, I find that I am satisfied that the purpose of the rental unit was for short term vacation or travel accommodation only, as stated in the agreement. In addition, this tenancy appeared to be some sort of commercial agreement between the parties. As such, I find that even if the parties intended upon entering into a tenancy agreement as contemplated under Section 1 of the *Act*, the *Act*

would not apply to this tenancy as there is no Landlord/Tenant relationship that has been created. Therefore, I have no jurisdiction to render a Decision in this matter.

However, the Respondent is cautioned that conducting business in this manner of renting a property under the guise of vacation or travel accommodation, but then also using Residential Tenancy Branch forms which indicate the opposite, may appear as if this is the Respondent's attempt to contract outside of the *Act*. The Respondent is cautioned that continued operation in this manner may warrant investigation and the levying of administrative penalties by the Compliance and Enforcement Unit of the Residential Tenancy Branch if it is determined that the Respondent is attempting to apply this practice of utilizing the *Act* when it is beneficial and suits the Respondent best.

As the Applicant was not successful in this Application, I find that the Applicant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this Application.

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 29, 2022

Residential Tenancy Branch