



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by D.D. August 19, 2022 (the "Application"). D.D. applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities
- To dispute a One Month Notice to End Tenancy for Cause (the "One Month Notice")
- For compensation for monetary loss or other money owed
- For reimbursement for the filing fee

D.D. appeared at the hearing. Y.Y., the owner of the property, and D.W., the property manager, appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

D.D. submitted documentary evidence of service with Tracking Numbers 239, 242 and 233 on it. D.D. testified that the hearing package was sent to Y.Y. September 10, 2022, and their evidence was sent December 14, 2022. The documentary evidence shows the packages were sent to Y.Y. at the address on the One Month Notice issued to D.D. I looked the Tracking Numbers up on the Canada Post website. The website shows the package sent September 10, 2022, was returned after notice cards were left September 13 and 18, 2022. The website shows two of the packages were sent December 16, 2022, and returned due to Y.Y. not being located at the address.

Based on the testimony of D.D., documentary evidence of service and Canada Post website information, I find Y.Y. was served with the hearing package and D.D.'s evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "*Act*"). D.D. was permitted to serve Y.Y. at the address provided for Y.Y. on the One Month Notice. Y.Y. cannot avoid service by failing to pick up registered mail packages. Y.Y. is deemed to have received the packages September 15, 2022, and December 21, 2022, pursuant to section 90(a) of the *Act*. I find D.D. complied with the Rules in relation to the timing of service. D.D.'s evidence is admissible.

D.W. testified that they served Y.Y.'s evidence on D.D. in person. D.D. did not dispute this and acknowledged they likely received the evidence and therefore I did not go into this issue further. Y.Y.'s evidence is admissible.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Preliminary Issue – Jurisdiction

An issue arose between the parties about whether there is a tenancy agreement between them covered by the *Act*. D.D. submitted that there is a tenancy agreement between the parties covered by the *Act* and Y.Y. disputed this.

Y.Y. testified as follows. The parties entered an agreement for D.D. to rent a workshop on Y.Y.'s property. In June of 2022, D.D. rented the workshop for \$2,500.00 per month and provided Y.Y. cheques for this; however, all the cheques bounced except for the first cheque. Y.Y. understood D.D. would use the workshop for welding and D.D. did in fact use the workshop for welding. D.D. did not pay a security deposit to rent the workshop. When D.D. rented the workshop, there was no bathroom or kitchen in it and no water or sewer connections.

Y.Y. further testified as follows. Y.Y. realised in September of 2022 that D.D. was living in the workshop. The workshop is not meant for living in. D.D. was not supposed to live in the workshop. Y.Y. never agreed to D.D. living in the workshop. There was never a time when Y.Y. knew D.D. was living in the workshop and accepted rent from D.D. for use of the workshop. Bylaw officers from the district have attended and told Y.Y. nobody can be living in the workshop and Y.Y. has been fined for D.D. living in the workshop. The workshop does not have an occupancy permit. D.D. has now set up

water connections and added to the electrical in the workshop without approval. D.D. has also put in a bathroom without approval.

D.D. testified as follows. D.D. used to live in a house on Y.Y.'s property. A prior property manager, J.F., agreed to D.D. living in the workshop and this is shown in the text messages submitted. Rent to live in the workshop is \$1,400.00. D.D. did not pay a security deposit for renting the workshop. D.D. gave Y.Y. cheques for \$1,250.00 every two weeks but these were only for the purpose of Y.Y. showing the bank Y.Y. was making money off the property. D.D. does not have documentation showing J.F. had authority to allow D.D. to live in the workshop. D.D. was originally using the workshop as a workshop. Y.Y. verbally agreed to D.D. living in the workshop. There was no kitchen in the workshop when it was originally rented to D.D.; however, D.D. has set up a cooking space. There were no water or sewer hookups to the workshop and no bathroom in the workshop when D.D. originally rented it. D.D. has now installed a bathroom in the workshop. D.D. acknowledges the district has said nobody can live in the workshop.

In reply, Y.Y. testified that J.F. did not have authority to allow D.D. to live in the workshop.

I have reviewed all the evidence submitted and read all the text messages submitted by D.D. I will refer to the relevant evidence below as necessary.

Analysis – Jurisdiction

Section 2 of the *Act* states:

2 (1) Despite any other enactment but subject to section 4...this Act applies to **tenancy agreements, rental units** and other **residential property**.

Section 1 of the *Act* sets out the following relevant definitions:

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

"tenancy" means a tenant's right to possession of a **rental unit** under a tenancy agreement;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting **possession of a rental unit**, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

(emphasis added)

Section 4 of the *Act* states that the *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...

Pursuant to rule 6.6 of the Rules, it is D.D. as applicant who has the onus to prove the claim. Part of proving the claim is proving there is a tenancy agreement covered by the *Act* between the parties. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

I have read the text messages between D.D. and J.F. and acknowledge they support that J.F. knew D.D. was living in the workshop and installing a bathroom in the workshop. However, I also note that J.F. wrote at one point about D.D. leaving the workshop and it being re-rented as a warehouse. I do note that the text messages support that J.F. held themselves out as acting for Y.Y.

I have also read the text messages between D.D. and Y.Y. and acknowledge they support that Y.Y. knew at some point that D.D. was living in the workshop; however, I note that the messages only start August 09, 2022. I also note that Y.Y. wrote about renting the workshop to another tenant; however, I cannot tell from the messages whether Y.Y. meant a commercial tenant or residential tenant.

Based on the evidence before me, I find the parties do not have a tenancy agreement between them that is covered by the *Act* for two reasons. First, I am not satisfied the workshop is "living accommodation" as this term is used in the *Act*. Second, even if the workshop is "living accommodation", I find the accommodation is included with premises primarily occupied for business purposes, and that these are rented under a single agreement.

I am not satisfied based on the evidence provided that the workshop is “living accommodation” for the following reasons. When D.D. rented the workshop, it did not have a bathroom, kitchen, water connection or sewer connection. The district has told Y.Y. nobody can live in the workshop and Y.Y. has been fined for D.D. living in the workshop. The workshop does not have an occupancy permit.

I find the workshop was not set up to be, and not meant to be, a space to live in when D.D. rented it. Further, I accept that the workshop has never been a space meant to be lived in.

Even if the workshop could be considered “living accommodation”, I find the accommodation is included with premises primarily occupied for business purposes, and that these are rented under a single agreement.

RTB Policy Guideline 27 about jurisdiction states:

c. Commercial Tenancies

The RTA 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.

Generally, if the primary use of the premises is residential, the RTA will apply. For example, if a tenant rents a house to live in, and the house has a detached garage out of which the tenant runs a small yoga studio, the RTA likely applies.

If a tenant rents a store and a small living accommodation above the store under a single agreement and the purpose for renting the property is to run the store, the RTA likely will not apply even if the tenant lives in the accommodation.

The director may consider municipal bylaws including how the property is zoned in deciding whether the tenancy is primarily residential or commercial.

RTB Policy Guideline 14 about commercial tenancies states:

Neither the Residential Tenancy Act nor the Manufactured Home Park Tenancy Act applies to a commercial tenancy. Commercial tenancies are usually those

associated with a business operation like a store or an office. If an arbitrator determines that the tenancy in question in arbitration is a commercial one, the arbitrator will decline to proceed due to a lack of jurisdiction. For more information about an arbitrator's jurisdiction generally, see Policy Guideline 27 - "Jurisdiction."

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. Some factors used in that consideration are: relative square footage of the business use compared to the residential use, employee and client presence at the premises, and visible evidence of the business use being carried on at the premises.

I find the accommodation at issue is included with premises primarily occupied for business purposes, and that these are rented under a single agreement, for the following reasons.

D.D. acknowledged that they originally rented the workshop to use as a workshop and that they did originally use the workshop as a workshop. I find the primary purpose of renting the workshop was for D.D. to use it as a workshop and not as living space.

D.D. did not pay a security deposit to rent the workshop which supports that it was rented as a workshop and not as a rental unit.

D.D. gave Y.Y. cheques totalling \$2,500.00 which supports Y.Y.'s position about this matter and that D.D. rented the workshop for use as a workshop. I do not accept that D.D. only gave Y.Y. the cheques to show the bank because I find it unlikely D.D. would issue cheques to Y.Y. for \$2,500.00 each month unless D.D. owed Y.Y. this amount each month.

The workshop did not have a bathroom, a kitchen, water hookups or sewer hookups when D.D. rented it which supports that it was rented for use as a workshop and not for the purpose of living in.

The district has said nobody can live in the workshop which supports that it was rented for use as a workshop and not for living in.

It is undisputed that D.D. ended up living in the workshop; however, I find the primary purpose of D.D. renting the workshop was to use it as a workshop and I do not find that D.D. later moving into the workshop changes the nature of the agreement in the circumstances of this matter. I find D.D. living in the workshop is a secondary use of the workshop. I find use of the workshop as a workshop and eventually to live in was agreed to by J.F., acting as agent for Y.Y., under one agreement because the documentary evidence shows these uses were linked and there is no written agreements before me showing there were separate agreements in place for use of the workshop and use of the living space.

Given the above, I find the *Act* does not apply and the RTB does not have jurisdiction to decide the Application. The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 20, 2023

Residential Tenancy Branch