



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act). STRATA's application for:

- An Order of Possession based on a Month Notice to end tenancy for cause (One Month Notice)
- Reimbursement of the filing fee

And DFCS's application for:

- Cancellation of the One Month Notice and more time to dispute the One Month Notice
- Reimbursement of the filing fee

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

Preliminary Matters, Facts and Analysis

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Legal Counsel PD for STRATA provided the following details as part of their submissions:

- STRATA served the one Month Notice to DFCS
- A commercial lease agreement (Lease Agreement) exists between the landlord (the City) and DFCS
- The Lease Agreement is for a studio (the Studio) that is part of a five-storey building (the Building) with 201 units. With the exception of the Studio, all units in the Building are residential units. The Landlord for all residential units in the Building is A (Landlord A)
- On May 12, 2024, a resident (Tenant A) of the Building filed with the Residential Tenancy Branch (RTB) an application for dispute resolution. Tenant A named Landlord A as the respondent. Tenant A filed their dispute due to excessive noise disturbances from the Studio. Tenant A was successful with their application for a monetary order for compensation for damage or loss under the Act, regulation, or tenancy agreement and an order for the Landlord A to comply with the Act, as noted in a RTB decision dated July 16, 2024. The decision of July 16, 2024, is referenced on the cover page of this decision.

Legal Counsel PD submits that although the current matter before the RTB relates to a commercial lease, the RTB has jurisdiction over this dispute given the parties were linked during a previous RTB dispute as noted above. Further Legal Counsel PD submits that DFCS must obey all strata bylaws and rules as per the Lease Agreement.

Legal Counsel MM for the Respondent/Applicant submits the following:

- The current matter deals with a commercial lease agreement, which states the premises cannot be occupied for residential purposes. The Studio is not occupied for residential use
- The previous decision of July 16, 2024, was with respect to a residential tenancy, in which case the Act applied. As such, any proposed link between the previous dispute and current dispute must not exist

Section 64 of the Act states the following:

Dispute resolution proceedings generally

64(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

Based on the above, in deciding the matter before me, I place no weight on the previous decision of July 16, 2024. I find the decision of July 16, 2024, was between different parties and the Act applied to that dispute given there was a residential tenancy agreement in place between Tenant A and Landlord A. Before me is the Lease Agreement between the City and DFCS, which I will address below in this decision.

Both parties testified that the current matter before the RTB is with respect to a commercial lease, a copy of which was submitted in evidence. The testimony and documentary evidence of both parties supports that the Lease Agreement is for a studio and related commercial use versus residential tenancy use.

Policy Guideline 14 provides guidance on the type of tenancy: commercial or residential. It states:

Generally

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.

Regarding the matter before me, I am not satisfied that the RTB has jurisdiction over this matter. I find the Act does not apply in this matter as per Policy Guideline 14, as the Lease Agreement is for the purposes of commercial use.

Conclusion

The RTB does not have jurisdiction to hear this matter, and I decline to make any ruling. The parties may turn to an alternate forum to seek dispute resolution services.

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: September 06, 2024

Residential Tenancy Branch