



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, CNC, ERP, OLC, RP, RPP, RR, FF

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 24, 2010, to cancel a One Month Notice to End Tenancy for End of Employment dated November 24, 2010, for an Order that the Landlord make emergency repairs and general repairs, for a rent reduction, for an Order that the Landlord return the Tenant's personal property and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Does this dispute fall within the jurisdiction of the Residential Tenancy Branch?

Background and Evidence

On September 14, 2010, the Applicant was hired as the resident manager for the Respondent which is a motel. A term of the Parties' agreement was that the Applicant would receive bi-weekly wages plus 50% of the net income of the motel. The net income was calculated by deducting the motel's operating expenses including an amount for the Tenant's wages and \$775.00 for rent from the motel's income.

It was a further term of the Parties' agreement that the Applicant would reside in one of the motel units on the property. The Landlord said the Applicant was given a choice of which unit he wished to occupy and has resided in more than one unit over the past 2 ½ month period. There is no tenancy agreement. The Tenant claimed that he was not required to pay rent directly to the Landlord but argued instead that it was an expense that was set off of the motel's income. The agents for the Landlord claimed that the Tenant was required to pay for rent in November 2010 (for the preceding 2 ½ month period) because the Landlord believed the Applicant had been depositing the motel's income to his personal account and making unauthorized expenditures. The Landlord dismissed the Tenant from his duties on November 24, 2010 and served him with the 10 Day Notice to End Tenancy and the One Month Notice to End Tenancy for End of Employment.



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Analysis

Section 4(d) of the Act says that “the Act does not apply to living accommodation included with premises that are primarily occupied for business purposes and are rented under a single agreement.” RTB Policy Guideline #14 states that in order “to determine whether a premises are primarily occupied for a business purpose or not, a dispute resolution officer will consider what the predominant purpose of the use of the premises is.”

I find that the Respondent hired the Applicant not only as the resident manager but also as the operator of the business whose income was in part determined by the profits of the business and who was primarily responsible for accounting for the receipts and expenses of the business. I also find that there was no tenancy agreement but rather that the rental unit was rented to the Applicant under a single commercial agreement which contained a term that \$775.00 would be considered a rent expense which would be set off of the business’ income for the purposes of calculating the commission payable to the Applicant (if any). Consequently I find that the primary purpose of the tenancy was to operate a business (or motel) and accordingly, I also find that this matter does not fall within the jurisdiction of the Residential Tenancy Branch pursuant to s. 4(d) of the Act.

Conclusion

The Tenant’s application is dismissed without leave to reapply due as it is a dispute that is excluded under s. 4(d) of the Act. 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: December 08, 2010.

Dispute Resolution Officer