



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC DRI MNDC OLC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- an order regarding a disputed additional rent increase pursuant to section 43;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing.

Preliminary Issue

Do I have jurisdiction under the Act to make a decision on the application before me?

Background and Evidence

A written tenancy agreement was entered into and signed by the parties at the end of August 2016. A copy of the written agreement was provided on file. The tenancy began on September 1, 2016 with a monthly rent of \$2000.00 payable on the 1st day of each month. The tenant paid a security deposit of \$2000.00 at the start of the tenancy which the landlord continues to hold.

Clause 4 of the tenancy agreement states as follows:

The Tenants may use the premises for B&B business and for no other purpose, any extra insurance cost for B&B business will be paid by the Tenants.

The rental unit is one half a duplex originally containing three bedrooms. The tenant subsequently built another bedroom. The tenants testified that he has only been residing in the rental unit since the summer of 2018. Prior to this he rented out all of the bedrooms in the unit through Airbnb. The tenant has obtained a short term rental license from the City of Vancouver for this rental unit. He only recently moved there as he has rented out all of the space in his primary residence which he owns.

The landlord agrees with the above expert disputes that the tenant is living in the rental unit now as all of the bedrooms in the unit are currently listed as available on Airbnb.

In an e-mail thread submitted as evidence by the tenant, the landlord herself suggests to the tenant that although the lease looks like a residential lease it is in fact a commercial lease as the tenants use it to run a business rather than reside in the unit.

Analysis

Section 4(d) of the *Act* stipulates 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,*

I find that the tenancy agreement entered into by the parties was for the primary purposes of the tenant operating an Airbnb business. The tenant has primarily occupied the rental unit for these business purposes since the beginning of the agreement.

Conclusion

I find that this tenancy agreement was for living accommodations which are primarily occupied for business purposes and are rented under a single agreement; therefore, pursuant to paragraph 4(d) of the *Act* I do not have jurisdiction over this matter.

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 07, 2018

Residential Tenancy Branch