



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT
COMMISSION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPE, MNRL, FFL

Introduction

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

- an order of possession for end of employment, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 15 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she is the property portfolio manager and that she had permission to represent the landlord company named in this application, as an agent.

The landlord stated that the tenant was served with the landlord's application for dispute resolution hearing package on February 28, 2020 by registered mail to the rental unit where the tenant is currently residing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on March 4, 2020, five days after its registered mailing.

Preliminary Issue – Jurisdiction to hear Matter

The landlord stated the following facts. No tenancy agreement was signed between the landlord and the tenant. The tenant did not pay a security deposit to the landlord for the rental unit. The tenant pays a rent of \$50.00 per month, which is deducted from her paycheck every month, which is a reduced amount, in order to live on-site as a building manager. The tenant was only provided with an offer letter of employment, dated January 8, 2019, stating that she was required to live in the rental unit as a

condition of her employment as an on-site building manager for the landlord company at the rental property. The tenant was given a termination letter, dated December 30, 2019, terminating her employment with the landlord company. The tenant was also given a 1 Month Notice to End tenancy for End of Employment ("1 Month Notice") on December 27, 2019 by the landlord. The tenant has refused entry to the rental unit and changed the locks. The predominant purpose for the tenant's use of the rental unit is to occupy it for business purposes as a condition of her employment.

Section 4(d) of the *Act*, outlines a tenancy in which the *Act* does not apply:

4 This 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;*

Residential Tenancy Policy Guideline 14 states the following regarding a commercial tenancy:

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 that this application is excluded by section 4(d) of the *Act* as the rental unit is primarily occupied by the tenant for business purposes and rented under a single employment agreement. The predominant purpose for use of the rental unit is for business purposes, as it is a condition of the tenant's employment as an on-site building manager with the landlord company, in accordance with Policy Guideline 14 above.

No tenancy agreement was signed between the parties and no security deposit was paid to the landlord. The tenant pays a nominal amount of \$50.00 per month, which is well below market rent, which is deducted from her paycheque, in order to use the rental unit during her employment with the landlord.

Now that the tenant's employment has been terminated, the landlord is seeking an end to the tenancy, not to continue the tenancy at the regular market rent rate. Simply because the landlord used an RTB form 1 Month Notice, does not indicate that this is a residential, rather than a commercial tenancy.

For the above reasons, I find that this is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the landlord's application.

The landlord can pursue any claims at the Provincial Court of British Columbia or the Supreme Court of British Columbia, if the landlord wishes to do so.

Conclusion

I decline jurisdiction over the landlord's application. I make no determination on the merits of the landlord's application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

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 27, 2020

Residential Tenancy Branch