



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNR, FFT

Introduction

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

- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62;
- cancellation of the landlords' Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 10, 2021 ("10 Day Notice"), pursuant to section 46; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The four landlords did not attend this hearing, which lasted approximately 19 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant stated that she served the four landlords with separate copies of the tenant's application for dispute resolution hearing package on January 18, 2021, all by registered mail. The tenant provided two Canada Post receipts and confirmed both tracking numbers verbally during the hearing. She said that she served two copies to two landlords, who are husband and wife living at the same address, to the landlords' address provided on the 10 Day Notice. She claimed that she served two copies to the other two landlords, who are husband and wife living at the same address, to the address to where she paid rent.

In accordance with sections 89 and 90 of the *Act*, I find that all four landlords were deemed served with the tenant's application on January 23, 2021, five days after their registered mailings.

Preliminary Issue – Jurisdiction

During the hearing, the tenant raised the issue of jurisdiction, stating that I did not have jurisdiction to hear this application. She said that both parties agree that this is a commercial and not a residential tenancy. She claimed that she rents a horse barn and 4 acres for her horses and other livestock to use, in order to run her business.

The tenant maintained that the landlords issued a 10 Day Notice to her and crossed out the word “residential” on the Residential Tenancy Branch (“RTB”) form and wrote twice, in their own handwriting “barn + 4 acres” and underlined it once. She said that the landlords also issued a signed letter to her on January 23, 2021, indicating that “this does not fall under RTB/RTA...” She explained that the handwritten tenancy agreement, signed by both parties, indicates that “Tenant will adhere to the municipal and provincial laws and has permission by the owner to operate a business.” She claimed that she has never lived at the property, there is a house on the property that is rented to other tenants, there is no living accommodation or a kitchen or bathroom for her to use at the property, and only her animals stay at the property.

Analysis – Jurisdiction

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,*

I find that this application is excluded by section 4(d) of the *Act* as this rental property is primarily occupied for business purposes and rented under a single agreement.

The tenant does not live at the rental property. Although there is a house at the property, the tenant does not live there, as it is rented to other tenants. The tenant runs a business at the rental property, where she keeps horses and other livestock. I find that the tenant rented the property for a singular business purpose, not for her own personal housing or shelter.

The landlords issued a signed, written tenancy agreement indicating that the tenant can operate a business on the property and stating that “the tenant can bring her horses and farm animals.” The landlords issued a signed, written letter to the tenant on January 23, 2021, indicating that this matter was not subject to the *Act* or RTB.

I find that the landlords’ written references in the tenancy documents, show that this is a business tenancy. The documents indicate that the tenant can use the rental property to operate her business, the tenant can keep animals at the barn and acreage property, and the *Act* does not apply to this matter. Although the landlords used an RTB form to issue a signed, written 10 Day Notice to the tenant, they altered the form to remove the residential reference and added a reference to the barn. Therefore, I find that using the RTB form does not determine that this is residential tenancy, rather than a business 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 tenant’s application.

Conclusion

I decline jurisdiction over the tenant’s application. I make no determination on the merits of the tenant’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 29, 2021

Residential Tenancy Branch