



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **OPR, MNRL, FFL**

Introduction

This hearing dealt with an application filed pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order of possession for unpaid rent pursuant to sections 46 and 55;
- A monetary order for unpaid rent pursuant to sections 26 and 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The respondents did not attend this hearing that commenced at 9:30 a.m. and ended at 9:55 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the applicant, his advocate and I were the only ones who had called into this teleconference.

The applicant attended the hearing with an advocate, PL. The advocate testified that he sent the Notice of Dispute Resolution Proceedings package to each of the respondents via registered mail on December 15, 2022. The tracking numbers for the mailings are recorded on the cover page of this decision. Based on the advocate’s testimony, that this was the residence of the respondents at the time of the mailing, I accepted that the respondents were served with the Notices of Dispute Resolution Proceedings in accordance with sections 89 and 90 of the Act the fifth day after they were sent.

Preliminary Issue – jurisdiction

The applicant and his advocate testified that the respondents are tenants in a hair salon the applicant owns at the address stated in the application for dispute resolution. The applicant had purchased the building from his uncle in 2010 and the respondents had been commercial tenants for the preceding 4 years, since 2006.

The respondents had been paying \$700.00 per month in rent for the hair salon but stopped paying in February 2022. There is no residential tenancy agreement between the parties.

On May 7, 2022, the respondents were removed from their own residential property by the bailiffs following an Order of Possession granted to their landlord on March 29, 2022. A copy of the arbitrator's decision was provided as evidence however the file number is unknown.

When the respondents were removed from their residence, they took up shelter in the hair salon. The respondent before me indicates he only seeks "rent" from the respondents from June 2022 onward because they were not residential tenants prior to this date. They have only been "squatting" in his shop since May of 2022. The respondents have stopped paying their rent for operating the hair salon since February 2022, however.

The respondents have since boarded up the windows to the hair salon and have been living in it. The applicant testified that there is a bathroom, but the bathroom only has a sink and toilet – no bath or shower. There is no kitchen facility although the respondents have a microwave and a portable oven they use to cook with. There is no bedroom in the unit.

When I asked the applicant whether the unit was zoned commercial or residential, the respondent responded saying the commercial properties have mixed uses in their town.

Analysis

Residential Tenancy Branch Policy Guideline 14 [Type of Tenancy: Commercial or Residential] states:

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.

Sometimes a tenant will use a residence for business purposes or will live in a premises covered by a commercial tenancy agreement. The Residential Tenancy Act provides 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."

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.

Based on the evidence before me, I find the primary use of the space was fully commercial, as a hair salon. It was never intended to be used as a residence and since the unit did not include a bathing facility or a kitchen, I find the commercial tenancy does not meet the definition of a living accommodation included with the business premises.

There is no residential tenancy established between the parties. The tenancy between the parties is commercial, having been established in 2010 when the applicant before me began accepting rent for the hair salon from the respondents.

Based on the foregoing, I determine the tenancy was commercial, not residential, and I decline to proceed due to a lack of jurisdiction.

Conclusion

I decline to accept jurisdiction for this tenancy as I find it is commercial and not residential.

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: April 24, 2023

Residential Tenancy Branch