



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD, MNETC, FFT

Introduction

This hearing was reconvened from a hearing on April 6, 2023 regarding the Applicant's application under the Residential Tenancy Act (the "Act") for:

- compensation of \$17,000.00 for the Applicant's monetary loss or money owed by the Respondent pursuant to section 67;
- return of the Applicant's security deposit and/or pet damage deposit in the amount of \$2,800.00 pursuant to section 38;
- compensation in the amount of \$14,400.00 due to the Respondent having ended the tenancy and not complied with the Act or used the rental unit for the stated purpose pursuant to sections 49 and 51; and
- authorization to recover the filing fee for this application from the Respondent pursuant to section 72.

On April 11, 2023, an interim decision in this matter was issued (the "Interim Decision"). This decision should be read together with the Interim Decision.

The Applicant and the Respondent attended this reconvened hearing and were given a full opportunity to be heard. The Respondent was assisted by JYH and an interpreter, CC. The Applicant was assisted by HL as the Applicant's agent and interpreter.

The parties acknowledged receipt of each other's evidence served pursuant to the Interim Decision.

Credibility

Credibility was a serious issue in this proceeding. The parties provided highly conflicting accounts regarding the most basic elements of their dealings, including the amount collected by the Respondent as a deposit, the amount of monthly rent that was to be paid by the Applicant, whether rent was in fact paid, and whether the premises were occupied by the Applicant for residential or business purposes.

Having heard the testimony and submissions of the parties in full, and having carefully reviewed the evidence submitted by the parties, I find the Applicant's evidence to be less credible. I find the Applicant did not provide any external evidence, such as ATM withdrawal records, bank statements, or communication records, to support payment of any of the amounts that the Applicant claims he had paid to the Respondent. In contrast, I find the Respondent provided communication records that support the date and amount of deposit received from the Applicant, as well as the Respondent's requests for further payment. Additionally, for the reasons explained below, I find the parties' evidence indicates that the premises were primarily occupied by the Applicant for business rather than residential purposes.

Background and Jurisdiction

While I have turned my mind to all the evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issue of jurisdiction are reproduced here.

The Applicant rented a ground floor suite from the Respondent following verbal discussions in or around December 2021.

According to the Applicant, he paid a cash deposit of \$1,200.00 and rent of \$1,200.00 to the Respondent on January 1, 2022. The Applicant asserts that he paid a further deposit of \$200.00 to the Respondent on January 11, 2022. The Applicant states that he continued to pay monthly rent of \$1,200.00 in cash to the Respondent on the first day of each month up to and including April 2022. The Applicant submits that he resided in the premises during this time and had the Respondent's consent to store the Applicant's massage equipment in the premises.

The Respondent submits that the Applicant paid a \$100.00 cash deposit on December 26, 2021. The Respondent provided a message he sent to the Applicant confirming receipt of this amount on that day. According to the Respondent, the parties had verbally agreed that rent would be \$1,000.00 per month. The Respondent submits that when he saw the Applicant arriving at the premises in January 2022 with massage equipment, he had agreed for the Applicant to use the premises as a temporary warehouse for the Applicant's massage equipment, and the Applicant could also live in the premises. However, the Respondent did not agree for the Applicant to use the premises for business operation. The Respondent submits that the Applicant moved his massage parlour and herbal medicine business into the premises. The Respondent

submits that the Applicant never lived in the premises and did not pay any rent despite multiple requests.

Section 4(d) of the Act states 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.

According to Residential Tenancy Policy Guideline 27. Jurisdiction, if the primary use of the premises is residential, the Act will apply. If a tenant rents a store and a small living accommodation above the store under a single agreement and the purpose for renting the property is to run the store, the Act likely will not apply even if the tenant lives in the accommodation.

Residential Tenancy Policy Guideline 14. Type of Tenancy: Commercial or Residential further states as follows:

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. For more information about an arbitrator's jurisdiction generally, see Policy Guideline 27 - "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.

(emphasis underlined)

Based on the photos provided by the Respondent, I find the Applicant's business equipment and items, including massage chairs, commercial signs, and piles of storage boxes, were kept throughout the premises. I find the Applicant did not section off any portion of the premises for residential use. I further find the Applicant had dismantled the beds provided by the Respondent and moved them outside of the premises. Given the state of the premises, I do not find the Applicant's assertion that he lived at the premises to be credible. I find the photos show that the Applicant had essentially transformed the premises into a massage parlour and warehouse, which made it unsuitable for ordinary residential living. Furthermore, I find the Respondent provided video evidence showing the Applicant's clients attempting to attend at the premises for the Applicant's services.

Under these circumstances, I find the premises rented to the Applicant was primarily occupied by the Applicant for business or commercial purposes. I find that any alleged residential use of the premises by the Applicant would have been incidental to and completely dwarfed by the predominant use of the premises for business purposes related to storing equipment and operating a massage parlour.

I conclude that pursuant to section 4(d) of the Act, the Act does not apply in the circumstances.

My authority is only with the Act, and since the Act does not apply, I decline jurisdiction to hear and decide any matters relating to this dispute.

Conclusion

Pursuant to section 62(1)(b) of the Act, I decline jurisdiction with respect to this dispute.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period set out in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected by the fact that this decision was issued more than 30 days after the close of the proceedings.

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: July 16, 2023

Residential Tenancy Branch