



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR OPR

Introduction

This hearing was convened because the Applicant filed for Dispute Resolution by Direct Request. The matter was subsequently referred to a participatory hearing, held on September 7, 2017. The Applicant sought the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Respondent did not attend the hearing. The Applicants, D.M. and P.R., provided affirmed testimony at the hearing. The Applicants testified the Notice of Hearing along with supporting documentary evidence was sent to the Respondent by registered mail on August 11, 2017. I find the Respondent received this package on August 16, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*. Further, the Applicants submitted more evidence in support of this hearing, which was sent to the Respondent by registered mail on August 24, 2017. I find the Respondent received this evidence package on August 29, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Applicants were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Documentary evidence (as per the “evidence summary”) submitted by the Applicants indicates that:

- The Respondent has a commercial lease with the Applicants.
- The premises are to be used for shop service of equipment and the Respondent is allowed to park one trailer on the property.
- The premises do not include living accommodations.
- The premises are primarily occupied for business purposes.

The Applicant also submitted a copy of the signed commercial lease agreement for the subject property. As per point #3 on the commercial lease agreement, the tenant may use the premises for shop service of equipment and residency (1 trailer only for himself).

In the hearing, the Applicants testified that the Respondent has a trucking company, and uses the property to store and maintain his business equipment. The Applicants further testified that the Respondent previously had one “fifth wheel” trailer parked on the property, beside the business shop. The Applicants further stated that the Respondent has now moved another trailer onto the property, which contravenes their commercial lease agreement.

Analysis

After considering the testimony from the Applicants, and reviewing the documentary evidence they provided, I find the first issue I must address, prior to considering the merits of the Application, is whether I have the jurisdiction to hear this matter under the *Act*. Section 4 of the *Act* states:

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 note the Applicants have stated that the premises do not include living accommodations in their “evidence summary” document. However, I also note that the commercial lease agreement states that the premises may be used for residency (one trailer only for the renter himself). I find the commercial lease agreement provides the renter with some rights to reside on the premises. However, in determining whether or not I have jurisdiction to hear this application, I will look at what the “predominant purpose” is for the use of the premises. I have considered that the Applicants

documentary evidence specifically indicates that the premises are primarily occupied for business purposes. Further, the Applicants testified that the main structure rented by the Respondent is a shop which is used to conduct business, and the Respondent sleeps in a mobile trailer unit, which appears to be ancillary to the commercial nature of the premises. As such, I find the “predominant purpose” of the use of the premises is commercial in nature, and is not considered a residential tenancy, under the *Act*.

Conclusion

I decline to proceed due to a lack of jurisdiction, and the application is dismissed without leave to reapply.

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, 2017

Residential Tenancy Branch