

Residential Tenancies Tribunal

Decision 19-0098-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:30 pm on 10 February 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador. It was conducted by teleconference through the Bell Alliant Conferencing system.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing and was represented by [REDACTED] as the owner of the company.
3. The respondent, [REDACTED] (doing business as [REDACTED]), hereafter referred to as the tenant, participated in the hearing.
4. The properties in question are located at [REDACTED]. The applicant testified that the respondent rented the subject properties on a nightly basis similar to an Air BnB business. The respondent would be invoiced for the nights he stayed at the properties and applicable HST was applied to the rentals again in a similar fashion to a tourist type operation. The applicant supplied a statement of account for the respondent along with invoices which clearly indicates the rental was a nightly rental and HST was applied.
5. There is a clear issue of jurisdiction in this claim that is required to be determined before the claims proceed.
6. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

7. The claim was filed at the [REDACTED] office of Residential Tenancies on 22 November 2019 and set for an original hearing on 15 January 2020. This hearing was re-scheduled for a new date of 10 February 2020 at which time the issue of jurisdiction was raised.
8. Tribunal's policies concerning notice service requirements and hearing attendance has been adopted from the *Rules of the Supreme Court, 1986*.
 - a. Rule 29.05(2)(a) states *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date* and, and where the respondent fails to attend the hearing, Rule 29.11(1) states *that the hearing may proceed in the respondent's absence so long as he/she has been properly served*.

The affidavit submitted by the applicant shows that the respondent was served with the notice of this hearing on the **27 January 2020** by serving the documents electronically to the email address: [REDACTED] Verification of the sent email was attached along with the email on the invoices which were paid.

Issues before the Tribunal

9. The applicant is seeking the following:
 - a) An order for the payment of rents owed (\$3622.50)
 - b) An order of Jurisdiction of the Tribunal in this matter;

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. Also relevant and considered in this case are Sections 3, 9 of *the Act*;

Issue 1: Jurisdiction of the Tribunal

Relevant Submissions

Applicant Position

12. The applicant in this matter holds that the respondent failed to pay for rental periods at two separate properties. The applicant submitted a Statement of Account along with several invoices to the respondent.
13. The issue of jurisdiction relies on the establishment of a landlord and tenant relationship between the parties.
14. The applicant states that rent was due and a portion of the due rent has yet to be paid as is seen in the statement of account.

Analysis

15. I have reviewed the testimony and evidence of the applicant in this matter. As far as I can see, the only issue here that needs to be addressed:
 - i. Has there been an establishment of a landlord and tenant relationship between the parties as determined by the *Residential Tenancies Act, 2018*, which will determine jurisdiction of this Tribunal.
16. As I understand the submission, the applicant is seeking the respondent to pay for rental payments not made. The question of whether or not the landlord is operating a tourist style home service as opposed to a residential housing accommodations where tenants live and normally reside. The question of jurisdiction is determinant on the fact if a relationship of a landlord and tenant existed as outlined in section 9 of the *Residential Tenancies Act, 2018* which reads:
 - 9. (1) A relationship of landlord and tenant takes effect when the tenant is entitled to use or occupy the residential premises whether or not the tenant actually uses or occupies it.**
 - (2) The doctrine of frustration of contract and the Frustrated Contracts Act apply to a rental agreement.**
 - (3) A common law rule respecting the effect of the contravention of a material covenant by a party to a contract on the obligation to perform by the other party applies to a rental agreement.**

(4) Where a relationship of landlord and tenant exists, a covenant concerning a thing related to the residential premises is considered to run with the land whether or not the thing is in existence at the time the relationship commenced.

17. It is clear from the documents presented that the applicant is clearly renting multiple properties to individuals and contractors on a nightly basis and charging applicable HST as it relates to services supplied. It is clear that the applicant is operating a similar type business to an Air BnB or a tourist/transient type accommodations. This type of accommodation do not establish a relationship of a landlord and a tenant and is strictly excluded under the *Residential Tenancies Act, 2018* as per section 3(4)(a) which reads:

3. (1) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies where the relationship of landlord and tenant exists in respect of residential premises.

(4) This Act does not apply to

(a) living accommodation used or occupied on a transient basis provided in a hotel, motel, inn, tourist home, hostel or other similar accommodation;

18. The evidence is clear on this issue the business being operated by the applicant, [REDACTED], is not a housing rental business that would exist between a landlord and tenant. The nightly arrangements and the application of HST to the rates applied are conclusive in this regard and in this tribunals view does not establish a relationship of a landlord and tenant. This relationship is more geared to a business owner and customer relationship. As such, I find that this tribunal does not have the jurisdiction to adjudicate on this matter and defers the issue to the appropriate court of jurisdiction.

Decision

19. The tribunal finds that there is no jurisdiction to adjudicate on this matter and defers the issue to the appropriate court of jurisdiction.

Summary of Decision

20. The tribunal does not have jurisdiction to adjudicate on this claim.

04 March 2020

Date

[REDACTED]

Michael Greene
Residential Tenancies Tribunal