

Residential Tenancies Tribunal

Application 2024-0491-NL & 2024-0503-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 28-June-2024 at 10:06 am.
2. The applicant, [REDACTED], was represented at the hearing by its sole director, [REDACTED], who attended via teleconference.
3. The respondent, [REDACTED], also attended via teleconference.
4. Also in attendance via teleconference were witnesses, [REDACTED] for the applicant, and [REDACTED] and [REDACTED] for the respondent. All witnesses attended via teleconference.

Preliminary Matters

5. The evidence which came out at the hearing raises the issue of jurisdiction. The parties agreed that the applicant rented out part of a building to a business for the purpose of running a bar. The rental included an upstairs area. The business then rented some or all of the upstairs portion to the respondent for its use as a residence.
6. This tribunal's jurisdiction is determined by s. 3(1) and s. 3(3) *Residential Tenancies Act, 2018* (the *Act*), which reads as follows:

Application of Act

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.
 - (3) The relationship of landlord and tenant shall be considered to exist in respect of residential premises where the tenant
 - (a) uses or occupies residential premises and
 - (i) has paid or agreed to pay rent to the landlord, or
 - (ii) a governmental department or agency has paid or has agreed to pay rent to the landlord;

- (b) makes an agreement with the landlord by which the tenant is granted the right to use or occupy residential premises in consideration of the payment of or the promise to pay rent; or
- (c) has used or occupied residential premises and
 - (i) has paid or agreed to pay rent to the landlord, or
 - (ii) a governmental department or agency has paid or agreed to pay rent to the landlord.

7. For the *Act* to apply, there must be a landlord and tenant relationship in respect of residential premises. There was no suggestion of an agreement between the applicant and the respondent. The representative of the applicant testified that he never received any payment from the tenant. The respondent's witness testified that the rent had been paid by a governmental agency until she received a notice from the agency that the payments would be suspended until an agreement was submitted between her and the building's owner. The applicant is adamant that the upstairs were never intended as a residence and that the lease was always commercial.

8. Based on the testimony of all parties, I conclude that there is no landlord and tenant relationship in respect of residential premises. Accordingly, this tribunal is not the appropriate venue to determine these claims.

Decision

9. This tribunal does not have jurisdiction to hear this matter.

18-July-2024

Date

