



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This hearing was scheduled to hear a tenant's application to cancel a Notice to End Tenancy for Cause. Both parties appeared at the hearing and were provided the opportunity to be heard and respond to the other parties' submissions.

The persons identified as the tenant in the Application for Dispute Resolution objected to being referred to as a tenant and the other party being referred to as the landlord. During the hearing, the parties were referred to by name and not the title of tenant or landlord. For this decision, the person occupying the subject residential property is referred to by the initials WDL and the party that issued the Notice to End Tenancy is referred to as INAC.

Issues(s) to be Decided

1. Is WDL a landlord or tenant?
2. Are there grounds to set aside the Notice to End Tenancy served upon WDL?

Background and Evidence

Upon hearing undisputed testimony of the parties, I make the following findings. INAC is currently the executor of the estate of WDL's late uncle. Prior to the death of WDL's uncle, WDL lived with his uncle in the residential property. WDL's late uncle left the residential property to WDL in his will; however, the property was mortgaged and the will did not specify how the mortgage was to be paid or discharged. WDL still resides in the property and has not made payments towards the mortgage or other costs associated with owning the property. The property remains registered in the name of the late uncle; however, the property is subject to a conditional sales agreement.

On February 3, 2009 INAC mailed WDL a *1 Month Notice to End Tenancy for Cause* (the Notice). The Notice identified WDL as a tenant of the residential property and indicates WDL “breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so”.

Both parties agreed that WDL had been found to meet the definition of a “Landlord” in a dispute resolution decision issued with respect to the residential property on May 14, 2007. The decision of May 14, 2007 recorded that the Landlord was in attendance at that hearing as were two agents for the landlord. In that decision, the Dispute Resolution Officer found WDL to be “an heir or successor to the former Landlord and therefore, under the Act, he is a Landlord of the rental unit. The Notice to End Tenancy is therefore invalid and is cancelled and dismissed.” The Dispute Resolution Officer referred the parties to settle their dispute in The Supreme Court of British Columbia.

INAC submitted that the former executor of the estate, who appeared at the previous dispute resolution hearing as the Landlord, was a lay person who did not understand estate law and did not adequately argue against WDL being an heir to the estate. The former executor did not request a review of the decision of May 14, 2009 or make application for a judicial review.

For this hearing, INAC submitted that although WDL was left the residential property in the will of his late uncle, the estate did not have sufficient resources to pay off the mortgage and transfer the property to WDL, and as a result WDL cannot be an heir to something that cannot be transferred to him. INAC submitted that a full accounting of the estates assets and liabilities was completed in July 2008.

Residential Tenancy Branch
Ministry of Housing and Social Development

INAC explained that the breach of a material term of the tenancy agreement, as identified as the reason for ending the tenancy on the Notice to End Tenancy, was WDL's failure to make any mortgage or other payments to the estate to cover the costs of the estate dispute repeated requests. WDL submitted that he had requested documents from INAC in order to obtain financing to pay off the mortgage but that INAC had failed to supply the requested documentation until recently and then INAC served him with the Notice.

WDL's position largely relied on the fact that a Dispute Resolution Officer had previously found WDL to be a landlord and that at no time did WDL and INAC enter into a tenancy relationship.

Analysis

The Act provides that a decision of a Dispute Resolution Officer, under the authority delegated by the Director, is final and binding upon the parties of a dispute. A review of a Dispute Resolution Officer's decision may be requested by either party to a dispute in certain circumstances, such as obtaining new and relevant evidence that was not available at the time of the original hearing; however, there are time limits for requesting a review of a decision. For the previous dispute resolution decision, issued May 14, 2007, either party could have requested a review of that decision within 15 days of receiving the decision; however, neither party did so.

A party may also request a judicial review of a Dispute Resolution Officer's decision to The Supreme Court of British Columbia; however, there are limitations with respect to requesting such a review. I understand that neither party requested a judicial review of the dispute resolution decision of May 14, 2007. The parties were also referred to The Supreme Court of British Columbia to resolve their dispute; however, INAC claimed that The Supreme Court of British Columbia did not have the jurisdiction to resolve the

Residential Tenancy Branch
Ministry of Housing and Social Development

dispute between the parties. Even if that were the case, the British Columbia *Residential Tenancy Act* does not apply merely out of default. Rather, it must be established that a residential tenancy agreement was entered into and that the Residential Tenancy Act applies to the tenancy.

Where a party does not agree with a decision made by a Dispute Resolution Officer, that party may not present a new argument at a subsequent dispute resolution hearing with respect to the same issue as an issue that is finally determined in one proceeding is binding on a party when that issue comes up in a subsequent hearing.

Other than a change in the executor of the estate, I find that other pertinent facts of this situation have remained largely unchanged: the property is still registered to WDL's late uncle, WDL is still residing in the residential property, and the estate is still managing the assets and liabilities of WDL's late uncle. I also find that the Dispute Resolution Officer's decision of May 14, 2007, where WDL was found to meet the definition of a Landlord, was a final and binding decision with respect to that issue. Therefore, I do not find grounds to re-hear or hear new evidence with respect to whether WDL meets the definition of a landlord.

Since WDL has been found to be a landlord of the subject residential property, and there is no basis for me to make another other determination of that issue, the Notice to End Tenancy that was mailed to WDL on February 3, 2009 is invalid and is cancelled.

Conclusion

WDL was identified as a tenant on the Notice to End Tenancy; however, WDL was found to meet the definition of a landlord in a previous dispute resolution decision. I do not have the authority to change that decision. Thus, the Notice to End Tenancy served upon WDL is invalid and cancelled.



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Ministry of Housing and Social Development

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: May 12, 2009.

Dispute Resolution Officer