



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened in response to an application filed by the tenant seeking to cancel a Notice to End Tenancy issued by the landlord for cause and to recover the filing fee.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Does the landlord have cause to end this tenancy?

Summary of Background and Evidence

The tenant testified that her tenancy began on September 1, 2005 with a rental rate of \$1,500.00 per month. One of the terms of the tenancy agreement is that the tenant must maintain a Farm Classification on the property. To maintain a Farm Classification the tenant is obliged to run a farm business on the property. The tenant says the farm business she operates is the same as has always been on the property and that is a horse stable. The tenant testified that each year she ensures the Farm Classification requirements are met and she has never had any problem maintain the Farm Classification with BC Assessment Authority.

The tenant testified that even prior to her own tenancy the property has been used as a horse stable providing horse boarding and riding lessons. The tenant testified that she took her own riding lessons on the property in 1991. In 2005 before she took over the tenancy of the property the tenant says she met with the previous tenant and the landlord and it was clear that she would continue to use the property for the same purpose it had always been used for. The tenant says at the time the property was managed by the landlord's daughter SF. The tenant says she has exchanged emails with the SF and SF has always been aware that the tenant operated horse riding lessons, breeding and boarding facilities on the property. The tenant says that, in one email dated October 25, 2006 SF mentions that she might take the tenant up on her

offer of lessons some day. The tenant says that she insures the business to industry standards. The tenant says she has supplied information about her coverage to the landlord and the landlord is well aware that there is sufficient coverage. The tenant submitted that the landlord attempted to evict her previously by issuing a Notice to End Tenancy for landlord's use. The tenant disputed that Notice and at a hearing held January 10, 2011 that notice was set aside.

Agent for the landlord says the landlord was never aware that the tenant was providing riding lessons and private horse boarding on the rental property. Agent for the landlord says the landlord just became aware of this in recent years. Agent for the landlord says there is no evidence that the landlord's daughter SF ever accepted an invitation for riding lessons and notes that the comment in the email in question refers only to "lessons" and this could be any type of lessons not necessarily horseback riding lessons. Agent for the landlord noted that the tenant is currently studying for her Masters degree in Zoology and this may have been why SF expressed an interest in lessons. The landlord is very concerned because the tenant is away from the property engaged in her studies and while she is away strangers come onto the property to deal with their horses, etc., and this puts the landlord in further jeopardy.

Agent for the landlord testified that the tenant's insurance coverage was not sufficient to protect the landlord from law suits which might occur as a result of the business she is running on the property. Further that the tenant's insurance coverage is listed under her own personal name and not under the name of the business. Agent for the landlord testified that they have written to the tenant asking her to cease operations and this has not happened.

Agent for the landlord notes that the tenant submitted that she only received her horse riding teaching credentials in 2007 so it is clear that she could not have been operating a riding school before that date.

The tenant responded that she was mentoring under another instructor who was also fully insured herself until she received her own instructor credentials in 2007. The tenant testified that the landlord was fully aware that SB was also teaching on the property.

The landlord also submitted an email from BC Assessment in which the landlord says that the business that the tenant maintains on the property will not qualify the property for farm status.

Agent testified that the tenancy is a residential tenancy and not a commercial tenancy.

Agent for the landlord agrees that the landlord attempted to evict the tenant a few months ago on the basis that the landlord wished to occupy the property. The landlord says it is true that the landlord wished to have this beautiful 5 acre piece of property for her own use however the Notice to End Tenancy was set aside.

Analysis

The onus or burden of proof is on the party making the claim in this case it is the landlord who must prove he has cause to end this tenancy. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden of proving their claim on a balance of probabilities and the claim fails. I find this to be the case in this claim. With respect to the issues of breach of a material term of the tenancy agreement, based on a balance of probabilities I find it is more likely than not that the landlord was well aware that the tenant was engaged in providing horse boarding, breeding and riding lessons on the rental property. With respect to the issue of insufficient insurance, I find that the tenant has supplied evidence that she has insurance coverage. While the landlord maintains that the coverage is not sufficient he has provided insufficient evidence to support that claim.

Conclusion

The tenant's application is allowed. The Notice to End Tenancy for Cause is dismissed. The effect of this decision is that this tenancy shall continue. As the tenant has been successful in her application I will allow her to recover the filing fee she has paid and direct that she deduct \$50.00 from her next rental payment.

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*.
