



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This hearing was scheduled to hear a tenant's application to cancel a Notice to End Tenancy for Landlord's Use of Property and for Orders for the landlord to comply with the Act, regulation or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

At the commencement of the hearing, I determined that the landlord had not received the tenant's second evidence package as it was sent to a fax number that is no longer available for use by the male shareholder of the corporate landlord. As I was satisfied the landlord had not provided the tenant with a fax number to use for service of documents upon the landlord, I excluded the documents from consideration; however, the tenant was given the opportunity to provide verbal testimony in place of the documentary evidence.

I also found it necessary to determine whether the Act applied to this living accommodation and whether I had jurisdiction to resolve this dispute.

Issue(s) to be Decided

Does the *Residential Tenancy Act* apply to this living accommodation and do I have jurisdiction to resolve this dispute?

Background and Evidence

I was provided undisputed evidence as to the following background information. The living accommodation is a 3 bedroom and 2.5 bathroom townhouse. The landlord is a corporation that was incorporated in Alberta and controlled by two voting shareholders living in Alberta. The two shareholders are husband and wife. The landlord acquired the property in late June 2010. The male shareholder, on behalf of the corporation, and the tenant signed a tenancy agreement on June 28, 2010 and June 30, 2010. The

tenancy agreement provides that the tenant will pay rent of \$1,000.00 on the 1st day of every month starting August 1, 2010. No security deposit was required or collected.

Both parties provided the following consistent testimony. The female shareholder and the tenant have been friends for approximately 50 years. The rent payable by the tenant is significantly below market rent. The landlord purchased a bed and kept it in one of the bedrooms in the living accommodation (herein referred to as the third bedroom). The shareholders stayed in the bedroom for nearly two weeks at the beginning of the tenancy and for approximately four days in September 2010. While the shareholders stayed in the third bedroom they would share the kitchen and bathrooms with the tenant. The tenant had use of the two other bedrooms and in February 2011 the tenant asked for the landlord's permission to use the third bedroom to accommodate the tenant's guest.

The landlord's shareholders testified that they retained the right to use the third bedroom as vacation accommodation and this was reflected in the below market rent. The tenant confirmed that she also understood that the landlord's shareholders would use the third bedroom at their discretion.

The tenant pointed out that the tenancy agreement does not provide a specific provision for the landlord's use of the third bedroom and that the female shareholder had previously stayed with the tenant as a guest in the tenant's former living accommodation.

The landlord's shareholders submitted that the reason the parties signed the tenancy agreement was for financing purposes and required by their bank. A dispute between the parties arose when the tenant permitted another person(s) to move into the rental unit.

Relevant documentary evidence considered in making this decision included the tenancy agreement signed by the parties, the Notice to End Tenancy issued by the landlord and signed by the male shareholder on May 19, 2011, a photograph of the third bedroom, and various written communications between the parties.

Analysis

The *Residential Tenancy Act* applies to tenancy agreements, rental units and residential property, subject to section 4 of the Act. Section 4 provides for living accommodation to which the Act does not apply. Section 4 provides, in part,

What this Act does not apply to

4 This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

Although the parties signed a Residential Tenancy Agreement document, which was produced by the Residential Tenancy Branch for general public use, I find the signed agreement does not reflect all of the terms agreed to by the parties or the parties' full intent in entering into their agreement. Nor is it expected that such a document would capture all of the relevant terms of agreement as agreements such as this one do not fall under the Act. Therefore, I do not rely solely upon the signed tenancy agreement as basis to conclude the Act applies.

Based upon the submissions of both parties, I am satisfied that in forming the tenancy agreement both parties intended that the landlord would retain the right to use the third bedroom, at its discretion, and that the tenant was compensated for not having sole occupation of the living accommodation by way of below market rent. I find this arrangement different from the times when the female shareholder would stay as a guest in the tenant's former home. The difference is that previously the female shareholder would be an invited guest in the tenant's home and there would be no compensation given by the female shareholder for use of the tenant's home.

In this case, the owner of the living accommodation is a corporation. A corporation, as a legal entity, cannot occupy or share living accommodation with a tenant. I base this finding upon section 49 of the Act. Section 49 of the Act contemplates and provides for a method for a corporate landlord to end a tenancy for landlord's use of property. Where a landlord is a family corporation, meaning the voting share are owned by closely related family members, the tenancy may be ended where the persons owning the voting shares intend to occupy the rental unit. This provision in section 49 recognizes that a corporation cannot occupy living accommodation, but that only the persons are capable of occupying such. Thus, the corporate veil is lifted and the activities of the voting shareholders are relevant. Therefore, I find the activities of the voting shareholders, as owners of the property after lifting the corporate veil, are relevant in determining whether the Act applies to this tenancy.

Based upon the submissions of both parties, I am satisfied the owners of the voting shares of the corporate landlord stayed in the third bedroom during the tenancy, using furniture they bought and kept in the third bedroom, and shared the kitchen bathrooms with the tenant during their stays. I am further satisfied that the shareholders shared the living accommodation as part of their right to do so under the agreement entered into with the tenant and not as an invited guest of the tenant.

In light of the above, I find that section 4(c) applies and the Act does not apply to this living accommodation. Therefore, I find that I do not have jurisdiction to resolve this dispute and the parties are at liberty to resolve their dispute in the appropriate forum.

Conclusion

I have found the Act does not apply to this living accommodation and I declined jurisdiction to resolve this dispute.

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: June 15, 2011.

Residential Tenancy Branch