



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FF

Introduction

This was a hearing with respect to the landlord's application for an early end of tenancy and a determination as to the jurisdiction of the Residential Tenancy Branch. The hearing was conducted by conference call. The landlord called in and participated in the hearing. He was represented by a legal assistant and by his lawyer. The named respondent called in and participated in the hearing.

Preliminary matter

The applicant raised a jurisdictional issue as a preliminary matter. The applicant has taken the position that the respondents are not tenants as defined by the *Residential Tenancy Act* and it is the applicant's view that the Residential Tenancy Branch has no jurisdiction over this dispute. The landlord based its position upon the following facts.

The subject property is a house on rural property near Nelson owned by the applicant. The respondents have occupied the property and lived in the house on the property since the autumn of 2011. According to the applicant, the respondent originally was engaged to occupy the property as a house sitter during the winter months. There is no tenancy agreement and the respondents have paid no rent. In November 2012 the parties discussed a proposal whereby the respondent might purchase the property from the applicant. A form of agreement was prepared but never executed.

The tenant's position is that she has been granted a right to occupy the property and the relationship is one of landlord and tenant, governed by the provisions of the *Residential Tenancy Act*.

Decision with respect to jurisdiction

The *Residential Tenancy Act* defines "tenancy agreement" as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 2 of the *Act*, entitled: "What this Act applies to" provides that:

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

The *Residential Tenancy Act* also provides by section 91 that: "Except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia".

At common law a licence to occupy land amounts to a permission to occupy land without which the person's occupancy would be unlawful. It is distinguished from a tenancy on the basis that a tenancy creates an interest in the land by way of a grant of exclusive possession, whereas a licence does not create an interest in land.

The *Residential Tenancy Act* has specifically included a licence to occupy within the definition of tenancy agreement. Section 2 makes it plain that the Act applies to tenancy agreements, rental units and other residential property.

I find that the house sitting arrangement, which has continued for several years was a permission to occupy residential property, given by the landlord and that it is a licence to occupy that falls within the definition of a tenancy agreement in the *Act*. I have therefore determined that the *Residential Tenancy Act* applies to the relationship between the parties and to the respondents' occupancy of the residential property and therefore that I have jurisdiction to hear and determine this dispute. I so informed the parties at the hearing and I heard their evidence and submissions.

Issue(s) to be Decided

Is the applicant entitled to an order for possession and if so when should the order be effective?

Background and Evidence

As stated above, the residential property is a house on rural land. In September, 2011 the respondents sent an e-mail to the applicant inquiring about the possibility of house-sitting for the winter in the applicant's house. By an exchange of e-mails it was agreed that the respondents would house sit. No rent was to be paid, but the respondents were to pay the heating costs. The tenants continued to occupy the property after 2011. As disclosed in e-mails to the landlord, the respondents were engaged in horticulture and were growing crops on the land. In the fall of 2012 there were discussions between the parties concerning what was referred to as a rent to own contract. In January 2013 the applicant presented a draft contract in the form of a rental agreement with an option to purchase. There were discussions between the parties regarding the purchase and sale of the property until July, 2013, however in August the applicant became concerned that the respondents' activities on the property were causing damage, creating friction with neighbours and depreciating the value of the property.

On about August 23, 2013 the applicant caused a letter from his lawyer to be served on the respondents. By the letter the applicant demanded that the respondents vacate the property within seven days from the date of the letter. The applicant's solicitor stated that if the respondents did not move within the seven day period, their continued presence would be considered a trespass, pursuant to the Trespass Act and the RCMP would be requested to have the respondents arrested and removed from the property. According to the solicitor for the applicants, because the respondents have declared that they are tenants and that the relationship is governed by the *Residential Tenancy Act*, the RCMP has refused to remove the respondents until the Residential Tenancy Branch has made a determination as to their status and the applicability of the *Residential Tenancy Act*.

Analysis

I have made the preliminary determination that the tenants occupy the residential property pursuant to a licence to occupy that falls within the definition of tenancy agreement under the *Residential Tenancy Act*.

At common law, a simple licence to occupy without more is revocable at the will of the licensor upon reasonable notice. The applicant contends that the notice given by his solicitor on August 23rd is ample and the landlord should be granted an immediate order for possession.

Section 44 of the *Residential Tenancy Act* sets out the means whereby a tenancy ends. In a tenancy pursuant to an agreement that provides for the payment of rent, a landlord

may end the tenancy by Notice to End Tenancy for non-payment of rent or pursuant to a one month Notice to End Tenancy for cause in the appropriate circumstances.

Section 44(1) (f) also provides that a tenancy may end if the director orders that the tenancy is ended. Because this is a tenancy at will and the landlord has declared his intention to end the tenancy, I find that it is appropriate for me to determine what would constitute a reasonable amount of notice in the particular circumstances, declare the effective date of the end of the tenancy and grant the landlord an order for possession effective on that date.

The e-mail exchanges between the parties show that the respondents have occupied the property with the applicant's consent for several years and that the applicant has throughout the relationship, been aware that the respondent was using the land for horticultural purposes. There were protracted, fruitless discussions between the parties about the purchase and sale of the property; this factor suggests that the respondents' occupancy was not regarded as trivial by either the applicant or the respondents and it points to the need for some reasonable amount of notice to end the respondents' occupancy. The respondents, however, are still mere licensees and, as such should not be afforded the same security of tenure that they might have under a formal tenancy agreement.

Conclusion

Under all the circumstances, and having regard to the respondents' use of the subject property during the period of their occupancy, I find that it would be reasonable for the tenancy to end on October 31, 2013 and pursuant to section 44 (1) (f) of the *Residential Tenancy Act*, I order that the tenancy end effective that day. I grant the applicant an order for possession effective on or before 1:00 P.M. on October 31, 2013. This order may be registered in the Supreme Court and enforced as an order of that court.

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: October 1, 2013

Residential Tenancy Branch

