



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened to hear the Applicant's claims in its application for dispute resolution made pursuant to the *Residential Tenancy Act* (the "Act") and for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47; and.
2. An Order to recover the filing fee for this application - Section 72.

The Applicant and Respondent were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Respondent states that no documentary evidence was provided for this hearing because the Respondent did not expect the Applicant to dispute the notice to end tenancy and because the Respondent did not collect any evidence to support the notice. The Respondent asks for an adjournment. The Applicant states that although the Respondent provided no detail for the notice to end tenancy making it difficult to prepare a response the Applicant disagrees with an adjournment and wishes to proceed.

Rule 7.9 of the Residential Tenancy Branch Rules of Procedure provides that a request for an adjournment will be considered, inter alia, by the degree to which the need for the adjournment arises out of the neglect of the party seeking the adjournment. Considering that the Applicant disputed the Notice a full two months prior to the hearing, I find that the Respondent had sufficient time to provide evidence to support the Notice. As such I dismiss the request for an adjournment.

Issue(s) to be Decided

Does the Act apply to the dispute?

Relevant Background and Evidence

The Parties agree that the Respondent served the Applicant with a one month notice to end tenancy for cause dated August 24, 2016 (the "Notice").

The Respondent states that a written tenancy agreement exists and there is nothing in the tenancy agreement in relation to horses. The Respondent states that the rent paid by the Applicant is only for the house but that the Applicant has full use of the 9 acres around the house. The Respondent cannot recall with certainty when the tenancy started and how much rent is paid. The Respondent states that the Applicant had seven horses from the outset, that the Respondent knew that the Applicant would have horses on the property when the house was first rented, and that the 9 acres of land was provided for the Applicant's horses. The Respondent states that the Applicant now has 30 horses on the property. The Respondent states that the Applicant also wants to rent the house on the Respondent's adjoining property. The Respondent states that the Applicant has not paid the insurance for having the horses on the property. The Respondent states that without insurance the Applicant is placing the Respondent's property at risk as the horses are going onto the highway and the Respondent's insurance does not and cannot cover any liability for the horses.

The Applicant states that she originally rented only the land to operate a horse riding business with off-site trails and to operate a non-profit business for horse rescuing. The Applicant states that when the house became available she rented the house too. The Applicant states that she pays \$2,015.00 per month for rent. The Applicant states that she has volunteers from around the world staying on the property in the trailers to help the Applicant with both businesses. The Applicant states that she carries different types of insurance including horse and farm insurance. The Applicant states that this year she is not operating the riding business for unrelated reasons but that when she did operate this business she had commercial insurance as well. The Applicant argues that the issue of jurisdiction has only been raised at the hearing, that the Respondent is using the evidence of the insurance to support the reasons for the Notice, and that there were no prior submissions or evidence provided by the Respondent to enable the Application to respond to the issue of jurisdiction.

Analysis

Section 4 of the Act provides that the Act does not apply to living accommodation included with premises that are primarily occupied for business purposes, and are rented under a single agreement.

Although the Applicant argues that they cannot properly respond to the matter of jurisdiction due to the lack of evidence provided by the Respondent, I note that the Applicant did not seek an adjournment in

order to respond to the matter of jurisdiction and did not earlier consent to the Landlord's request for an adjournment to provide evidence.

Although the Respondent states that the rental agreement is only for the house, given the Respondent's evidence that the horses were always present and that the Applicant has full use of the land around the house for the horses, I find that the rental agreement is a single agreement that provides for both the house and use of the surrounding land. Accepting the Applicant's undisputed evidence that the land alone was first rented for the horse rescue and trail riding businesses, that both of these business continued after renting the house, that 30 horses currently on the land with only the cessation of the trail riding business and considering the evidence of business insurance concerns and usage of both Parties, I find that the house was and continues to be primarily occupied for business purposes, whether for profit or non-profit. As a result I find that the dispute is not covered by the Act and that the Notice and application may therefore not be considered.

Conclusion

The Act does not apply to the 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: November 4, 2016

Residential Tenancy Branch