



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a Two Month Notice to End Tenancy for landlord's use of the property; other issues; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on November 18, 2016. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the Two Month Notice to End Tenancy?

Background and Evidence

The tenant testified that he and another tenant first resided on the property when it was owned by the former landlords starting in 2007. The original owners offered the tenants the right to purchase the property and gave them first refusal on any purchase. The tenants were waiting to sell other property at the time and could not afford to purchase

the property. After two years a neighbour of the tenants who was a real estate agent advised them to go into a partnership of sorts with the current landlord. Their agreement was if that family purchased this property the tenants would hand over their right of first refusal to buy the property and in exchange the tenants would continue to live and operate their garlic business on the 10 acres of land within the boundaries of the property and live rent free for a life time estate.

The tenant referred to a signed agreement which states this is a life lease within the boundaries and if the tenants pass away then their children have the right to do what they want with any improvements. At the time of the death of the life lessee the land goes back to the property owner who has the right to first refusal on the improvements. The tenant testified that this lease agreement was duly signed by himself and the landlord on February 21, 2009 and witnessed by a third party. The other tenant is no longer living on the property. The tenant testified that he was 40 years old at the time the lease agreement was entered into.

The tenant testified that as this lease is for his life time then the Residential Tenancy Branch does not have jurisdiction as the *Residential Tenancy Act (Act)* does not apply in this tenancy. Furthermore, the tenant's lawyer has filed in Supreme Court to deal with this matter and all documentation concerning that action has been sent to the landlord. The tenant provided a Supreme Court File Number in evidence.

The tenant seeks to have the Two Month Notice cancelled and seeks to recover the filing fee of \$100.00.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows: This tenancy appears to be a life time lease for the tenant to occupy this property at which time, upon the tenant's death, it will revert back to the owner of the property. I refer the parties to s. 4 (i) of the *Act* which

provides for certain tenancies that the *Act* does not apply to. These include living accommodation rented under a tenancy agreement that has a term longer than 20 years. While I accept that this lease agreement does not specify a term longer than 20 years it does include a life time occupancy for the tenant who was 40 years old when the lease agreement was entered in to and therefore any reasonable person could conclude that this term could be longer than 20 years.

Consequently I find the *Act* does not apply to this tenancy and I therefore decline jurisdiction in this matter. The tenant has filed an application to have this matter dealt with in the Supreme Court of British Columbia and therefore the matter can be decided at that legal forum.

Conclusion

As I have declined jurisdiction in this matter, this application is dismissed in its entirety without leave to reapply.

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: January 03, 2017

Residential Tenancy Branch