



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNDC, FF

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession pursuant to an agreement in writing to end the tenancy.
- b. A monetary order in the sum of \$11,500
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Tenant on December 7, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the Residential Tenancy Branch has jurisdiction to hear the matter?
- b. Whether the landlord is entitled to an Order for Possession pursuant to settlement agreement?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on April 1, 2016, continue for one year and become month to month after that. The rent was initially \$1700 per month for the first 6 months to be increased to

\$2000 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$850 on May 1, 2016.

Problems arose between the parties and both filed claims with the Residential Tenancy Branch. Prior to the first hearing the parties entered into a Settlement Agreement and Mutual General Release of all Claims dated for reference November 27, 2016. The agreement was prepared by the solicitor for the landlord and included the provision that the tenancy would end effective January 1, 2017 the landlord would pay the tenant \$7500 and would waive the rent for December 2016. The arbitrator who was assigned the first hearing recorded that the parties had settled the matter and cancelled subsequent hearings. The issue of jurisdiction was not raised before him.

The landlord filed the within application on December 7, 2016 seeking to enforce the Settlement Agreement.

The Tenant responded to the landlord's claim submitting that the Residential Tenancy Branch does not have jurisdiction on the basis under section 4(d) of the Act which provides as follows:

What this Act does not apply to

4 This Act does not apply to

...

- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,

The materials filed by the Tenant stated that the rental property was rented in order to operate an equestrian center with all the related amenities including a covered riding arena, a horse stable that housing up to 22 horses etc. The materials further state the landlord was aware that the Tenant's purpose for leasing the premises was to run an equestrian business. The tenant has 7 seven rescue horses on the rental property. The tenant lives in the loft of the horse stable which has been made into a small suite with two bedrooms, two bathrooms, a kitchen and living room area.

After receiving the tenant's submission the landlord conducted further research and he now agrees with the Tenant's submission based on the British Columbia Court of Appeal's decision in *Gardiner v 857 Beatty Street Project*, [2008] B.C.J. No. 268.

The tenant stated at the hearing that she intends to move by the end of January. She has looked for alternative property to accommodate her animals and has recently found one close by. Her move has been delayed because of the unusually cold winter and the difficulty of finding contractors who are able to move her horses..

The tenant stated that she was prepared to agree to end the tenancy at the end of January 2017. The landlord submitted any agreement in this hearing is not enforceable given the lack of jurisdiction. He further submits that based on the Gardiner decision it is not possible for the parties to attorn to the jurisdiction.

Decision:

After carefully considering all of the evidence and the submission of the parties I determined the Act does not apply to this tenancy as it includes living accommodation that are primarily occupied for business purposes and are rented under a single agreement. The Court of Appeal case is binding on me. I determined the Residential Tenancy Act does not apply and that I do not have jurisdiction. As a consequence I declined to hear this matter.

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 11, 2017

Residential Tenancy Branch