



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS CNL DRI FF OLC RR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with an application for:

- cancellation of the respondent's request for a termination of a license;
- recovery of the filing fee from the landlord pursuant to section 72;
- an Order for the landlord to comply with the *Act* pursuant to section 62;
- an Order permitting the tenant to assign or sublet pursuant to section 65;
- dispute of an additional rent increase pursuant to section 43; and
- a reduction in rent for repairs agreed upon but not provided pursuant to section 65.

Both the applicant and the respondent attended the hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The applicant was represented at the hearing by his lawyer, D.P., while the respondent was represented at the hearing by lawyer D.B. (the "respondent").

The respondent testified that he received the Application for Dispute Resolution hearing package. The parties agreed not to object to documents submitted later than the *Residential Tenancy Branch* requirements because they have been in settlement discussions.

On February 16, 2017, corporate counsel for the respondent, C.N., couriered a letter to the applicant. This letter explained that the applicant's license to occupy the property would be terminated March 31, 2017. The applicant understood this letter to be a 2 Month Notice to End Tenancy for Landlord's Use of Property and thus applied to dispute this notice.

Preliminary Issue – Jurisdiction

At the outset of this hearing, I explained to the parties that I had concerns centering on my jurisdiction to hear this matter. Counsel for both parties stated that they had considered this matter may fall outside the scope of the *Residential Tenancy Act* and they both wished to make submissions on that issue. I explained that I would consider

the evidence related to the matter contained in the Application for Dispute Resolution and would reserve making a decision concerning the issue of jurisdiction until the conclusion of the hearing.

On March 1, 2014, the applicant and the respondent entered an agreement referred to as a license under which the applicant had the non-exclusive right to enter and be upon a designated portion of land owned by the respondent. This license was granted for residential occupation and was grandfathered in from a previous arrangement that the respondent had with a different family who had a falling out with the respondent company. Counsel for the respondent argued that the “tenancy” in question is a license agreement with the applicant which is commercial in nature and falls outside of the *Act*. Counsel for the applicant contended that the agreement between the parties was, in fact, a periodic tenancy which provided housing to his client.

The first question before me is whether the parties entered into a commercial licensing contract, or if a periodic tenancy was created.

Residential Tenancy Policy Guideline #9 explores the issue of tenancy agreements and licenses to occupy. This Guideline notes, “A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or “licensee,” is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term...the landlord may only enter the site with the consent of the tenant.”

This guideline goes on to say, “If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created...in order to determine whether a particular arrangement is a license or a tenancy, the arbitrator will consider what the parties intended, and all of the circumstances surrounding the occupation of the premises.”

Policy Guideline #9 provides some direction on factors that may weigh against finding a tenancy. They include:

- payment of a security deposit is not required
- the owner retains access to, or control over, portions of the site
- the owner retains the right to enter the site without notice
- the parties have agreed that the occupier may be evicted without a reason or may vacate without notice

Counsel for the applicant argued that the respondent's actions demonstrated that an implied tenancy existed and a periodic, "fixed-term" tenancy was created. The applicant argued that evidence of a tenancy between the parties exists in the history of verbal agreements and licenses signed between the parties, notably the license signed on May 12, 2016 which says, "This license is granted for the purpose of Residential Occupation." Additionally, the applicant submitted three emails from P.D, the respondent's Land & Resource Manager, as further evidence of the existence of a tenancy.

I have examined the emails sent by P.D. to the applicant, the Licenses (both signed and unsigned) and to the submissions provided by the parties during the course of the hearing.

P.D., the Land & Resource manager, sent three emails to the applicant dated, February 18, 2016, February 28, 2017 and March 2, 2017 concerning issues with the property in question. Counsel for the applicant argued that the February 28, 2017 email created a fixed-term tenancy, because P.D. was offering to accept \$1,500.00 per month for a fixed period of time. Additionally, it was argued that these emails from P.D. to the applicant amounted to acknowledgement of a landlord-tenant relationship because the parties discussed maintaining the applicant as a "tenant," an agreed upon rental rate, and requirements that had to be met for the applicant to sublet and run commercial ventures off of the property.

Three license agreements were entered into evidence by the applicant. Only one of these license agreements was signed by the parties. A series of informal agreements were also made between the parties on payments for use of the property where a gap in time existed between the license agreements.

- 1st Licence with Effective Date - March 1, 2014 (unsigned)

This agreement between the parties states:

"ABC¹ grants to the License, the non-exclusive license to enter and be upon that part of the "Lands" show in red on the attached print and described as...

The document continues, "This license is granted for the purpose of Residential Occupation and no other purpose, upon the terms agreed to herein."

¹ Anonymized

The License contains detailed descriptions of the property to be occupied, noting that, “no improvements may be placed on, or physical changes made to, the Lands without the prior written consent of ABC,” and continues by listing the requirement for fire suppression equipment to be present on the property, along with environmental responsibilities, assumption of risk and liabilities, insurance requirements and terminations, suspension and renewal considerations that must be adhered to by the parties. Testimony was provided by counsel for the applicant that the clause concerning the requirement of fire suppression equipment was deemed to be an excessive cost by the applicant and he therefore refused to sign this agreement.

A close examination of clauses contained within the heading Termination, Suspension and Renewal reveals that, “Either party may terminate this License by giving the other thirty (30) days notice (sic) and the privileges granted under this License may be suspended or modified as ABC, in it's (sic) discretion, thinks advisable.”

- 2nd License with Effective Date – May 15, 2016 and an Expiry Date – November 15, 2016 (signed)

This agreement between the parties contains nearly the exact same clauses as the first License. The main difference between the agreement dated March 1, 2014 and the one dated May 15, 2016 is the amount of license fee (increased from \$1,500.00 to \$2,000.00) and the removal of the terms pertaining to Taxes, Safety Requirements and Fire Suppression Equipment.

Additionally, the document contains a very detailed clause concerning insurance requirements by the licensee. This clause requires that the licensee acquire various different forms of insurance coverage to ensure that any and all sub-licenses were covered for commercial activity.

- 3rd License with an Effective Date – February 15, 2017 (unsigned)

This License contains nearly the same clauses and terms as the above noted licenses; however, it contains updated terms on the obligations concerning maintenance and repairs, and has removed the provisions related to a renewal of the license.

To summarize, the oral and written submissions provided by counsel for the applicant centered on the argument that the respondent's actions created a fixed-term tenancy and that the respondent was aware that the property was being occupied for residential

use as it was the applicant's only place of residence. Thus, it was contended that an implied tenancy was created.

The respondent argued that this was a license agreement with the applicant which was commercial in nature and outside the intended purpose of the *Act*. The respondent noted that the lands being used by the applicant were primarily commercial in nature and that his residence only made up a small portion of the 12 acre plot, which was otherwise being used for commercial purposes. He also pointed out that the written agreement referred to a license for the "non-exclusive right to enter and be upon the premises."

The legislation does not confer upon the RTB the authority to hear all disputes regarding every type of relationship between two or more parties. The RTB only has the jurisdiction conferred by the Legislation over landlords, tenants and strata corporations... *Section 1* of the *Act* notes in its section titled "Definitions" that a "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 license to occupy a rental unit.

The evidence before me in the parties' evidentiary packages and the submissions made at the hearing shows that the respondent entered into a contractual relationship with the applicant; however, as noted above, the main elements of a landlord/tenant relationship were absent, notably:

- payment of a security deposit is not required
- the owner retains access to, or control over, portions of the site
- the owner retains the right to enter the site without notice
- the parties have agreed that the occupier may be evicted without a reason or may vacate without notice

During the course of the relationship between the applicant and the respondent, the respondent always maintained a "non-exclusive licence to enter and be upon" the "Lands." This type of agreement, while in part for residential occupation, did not confer the applicant the essential right of exclusive possession that is the central feature in a typical residential tenancy. Furthermore, the Licence agreed to by the parties on May 15, 2016 contained numerous clauses that spoke to the industrial nature of the land, the contractual intent of the respondent and the requirements that had to be met by the applicant in order maintain this contract, specifically, the clauses pertaining to the

Environmental Responsibility, Assumption of Risk and Liability, Insurance, Termination, Suspension and Renewal, and Common Area Expenses.

Although the applicant has no other address which he identifies as his residence, I find that this property is industrial land that has other purposes than purely residential. There was no tenancy agreement, as the applicant did not have exclusive possession of the lands, and no security deposit was collected. Furthermore, the emails between P.D. the respondent's Land & Resource Manager, while interpreted by the applicant as suggesting a tenancy agreement, must be read in context with the licence agreements as noted above.

After considering all of the factors outlined above and after listening to the oral testimony of the parties, I find that I am without jurisdiction to consider the application before me as the *Act* does not apply to this matter.

It is evident that the applicant has put a lot of time and energy into this property; however, the nature of his agreement with the respondent was not one of landlord/tenant.

Conclusion

I decline to rule on this matter as I have no jurisdiction to consider this application

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: May 24, 2017

Residential Tenancy Branch