Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL DRI O OLC

Introduction

This hearing was convened in response to applications by the tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- to cancel a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47 of the *Act*;
- for an Order pursuant to section 62 compelling the landlord to comply with the *Act*;
- to dispute an additional rent increase pursuant to section 43 of the *Act*; and
- Other unspecified relief.

The tenant and the landlord attended the hearing. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord explained that two 1 Month Notices to End Tenancy for Cause were served on the tenant. The first 1 month Notice was given to the tenant in person on April 25, 2017. The tenant acknowledged receiving the notice on this date. Pursuant to section 88 of the *Act* the tenant is found to have been duly served with this 1 Month Notice.

On June 1, 2016 the landlord gave the tenant a revised 1 Month Notice, in person. This 1 Month Notice was amended by the landlord to reflect an effective date of August 31, 2017. The tenant acknowledged receiving this notice on the date of its service. While this form does not comply with the requirements of section 52(e) of the *Act*, after listening to testimony from the parties, I am satisfied that the tenant is aware of the reason for its service and has had an opportunity to challenge the merits of its contents.

The tenant testified that she sent a copy of her Application for Dispute Resolution hearing package ("dispute resolution hearing package") and evidentiary package to the landlord on June 22, 2017 by way of Canada Post Registered Mail. A copy of the tracking receipt and number was provided to the hearing. The landlord confirmed receipt of this package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application for dispute resolution hearing.

Issue(s) to be Decided

Can the tenant cancel the landlord's 1 Month Notice? If not, will the landlord be granted an Order of Possession?

Should the landlord be directed to comply with the *Act*?

Can the tenant dispute an additional rent increase?

Background and Evidence

Testimony was provided by the tenant that this tenancy began in May 2016. Rent was $800.00 per month and no security deposit was collected at the outset of the tenancy. Both parties described this property as being agricultural in nature and comprising of 10 acres. Livestock roam the property and the "rental unit" consists of a 5th wheel trailer that was brought on to the property by the tenant. The tenant testified that this 5th wheel is the only form of housing she has, and she explained that she signed an agreement with the landlord to rent the property with the understanding that she would be moving this 5th wheel on to the property for occupation.

The landlord disputed this version of events and testified that the tenant had moved the 5th wheel on to the property without notice. He stated that the nature of their agreement originally consisted of a rental of the pasture by the tenant for the purpose of raising goats and other livestock. When he became aware of the presence of the 5th wheel trailer, the landlord stated that he begrudgingly accepted its existence; however, he said that he warned the tenant it may not be legal. The landlord submitted an agreement signed between the parties on June 1, 2016 that said, "Rent for $500.00 per month. Deposit $250.00 at later date. Rent will increase to $1,000.00 to go towards improvements such as sewage, well buildings etc." A second agreement dated March 2017 submitted by the landlord states that the tenant has agreed, "To rent the upper property of 1234 XYZ Rd. Rent is 800$ (sic) per month. Due on the first of each month. Maintenance of the land for farming purposes is looked after by the tenant (D). We shall agree to have insurance as required."

During the hearing, both parties agreed that on April 25, 2017 the landlord received a letter from the Regional District informing him that, "It has come to our attention that a recreational vehicle has been set up and occupied on the above noted property in contravention of regulations…an inspection will be conducted within thirty (30) days to confirm that the recreational vehicle has been removed." Following discussions with the Regional District the landlord was able to secure a 90-day extension for the tenant to remove the 5th wheel from the property.

After having received the April 25, 2017 letter from the Regional District, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause. The cause cited on the notice was listed as, "rental unit/site must be vacated to comply with a government order." Following the 90-day reprieve given to the landlord by the Regional District, a second 1 Month Notice was served on the tenant with the same reason listed as cause.

During the course of the hearing the tenant argued that she had no issue removing the 5th wheel from the property; however, she disagreed that she should be directed to remove all of the livestock and her belongings from the property on the effective date of the Regional District's notice. She contended that the letter from the Regional District was silent on any issues concerning her livestock and belongings, and that the letter clearly stated only the trailer was to be removed.

Analysis

This application raises an issue as to the nature of this tenancy and whether I have authority to decide this dispute under either the *Residential Tenancy* Act, or *The Manufactured Home Park Tenancy Act*. Section 2(1) explains that the *Residential Tenancy Act* applies to tenancy agreements, rental units and other residential property, while section 2(1) of the *Manufactured Home Park Tenancy Act* states, "This *Act* applies to tenancy agreements, manufactured home sites and manufactured home parks."

Residential Tenancy Policy Guideline #14 explores the issue of commercial or residential tenancies in more detail and explains, "to determine whether the premises are primarily occupied for business purposes or not, an arbitrator will consider what the "predominant purposes" of the use of the premises is…The *Manufactured Home Park Tenancy Act* applies to manufactured home sites, the parks in which the sites are located and the tenancy agreements governing them. A manufactured home site is defined in that *Act* as a site rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home."

Both parties provided similar testimony that the nature of the agreement signed between the parties centered on the tenant's use of the land for raising various animals. Their testimony conflicted however, on whether the tenant had the right to reside in a 5th when trailer on the property. The landlord explained that this property was rented to the tenant as a goat pasture and that she brought her 5th wheel trailer on to the property without notice. An agreement signed by the tenant in March 2017 and submitted to the hearing as part of the landlord's evidentiary package demonstrates that $800 was paid by the tenant to rent land for "farming purposes." The tenant explained that she understood the agreement she signed with the landlord to be one allowing her to keep various animals on the property, but she argued the landlord was aware she would be living on the property in a 5th wheel.

I find that based on the testimony of both parties and the evidence before me that the predominant purpose of the agreement entered into between the parties is commercial in nature and falls outside the scope of either the *Residential Tenancy or Manufactured Home Park Tenancy Act*. Both parties acknowledged that the property was rented to the tenant for the purpose of raising animals. The evidence however, falls short of establishing any meeting of the minds between landlord and tenant on the tenant's right to reside on the property. The landlord said there was simply no such agreement and that the warned the tenant she might be breaching municipal laws. The tenant says the landlord agreed to her residing in the property

when they signed the agreement, but the written agreement is silent on that point. Furthermore, the Regional District does not permit the property to be occupied by recreational vehicles and the land therefore cannot be considered a manufactured home park, as that extends only to sites rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home.

For the reasons cited above, I find that I do not have standing to rule on this matter, that this was a commercial agreement entered into between the parties to rent an agricultural plot of land, and I therefore, dismiss the tenant's application for relief under either the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*.

Conclusion

The tenant's application is dismissed 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: July 18, 2017

Residential Tenancy Branch