



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein the Applicants sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use issued on January 28, 2018 (the "Notice") in which the Landlord claimed to have all necessary permits and approvals required by law to renovate the unit in such a manner that vacant possession was required.

The hearing was scheduled for teleconference on April 26, 2018. Both parties called into the hearing.

At the outset of the hearing the Respondents confirmed that they are former spouses having divorced in 2015 and now own the subject property as tenants in common, rather than joint tenants. They further advised that by B.C. Supreme Court Order in the divorce proceedings the subject property was to be sold. The property is currently not listed for sale, although it is the Respondent M.B.'s wish to list the property as soon as possible.

The Applicant J.F., is the nephew of the Respondents. He and his spouse, D.S. and their children reside in the subject property.

The Respondents agreed that the Applicants have lived in the subject property since November 1, 2016. The Applicants do not pay rent and have not paid a security deposit. They also do not have exclusive possession of the subject property as the Respondent, M.B., has access to the back room for her storage as well as an outbuilding.

The parties agreed that M.B. issued the Notice. G.F. confirmed he had no part in issuing the Notice and does not wish the Applicants to move as he claims they are the property's caretakers.

Analysis and Conclusion

The power and authority of the Residential Tenancy Branch is derived from the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. The dispute resolution process does not create a court and as such, Arbitrators delegated under these *Acts*, do not have

inherent powers arising under the common law which are possessed by a judge; rather, Arbitrators must only assume jurisdiction over tenancy disputes which are governed by the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*.

Consequently, before I can consider the issues between the parties I must first be satisfied that I have jurisdiction over their dispute.

Residential Tenancy Branch Policy Guideline 9-- Tenancy Agreements and Licenses to Occupy provides the following guidance.

“This Guideline clarifies the factors that distinguish a tenancy agreement from a license to occupy. The definition of “tenancy agreement” in the Residential Tenancy Act includes a license to occupy...

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, which can include month to month. The landlord may only enter the site with the consent of the tenant, or under the limited circumstances defined by the *Manufactured Home Park Tenancy Act*¹. A licensee is not entitled to file an application under the *Manufactured Home Park Tenancy Act*.

If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise.

For example, a park owner who allows a family member to occupy the site and pay rent, has not necessarily entered into a tenancy agreement. In order to determine whether a particular arrangement is a license or tenancy, the arbitrator will consider what the parties intended, and all of the circumstances surrounding the occupation of the premises.

Some of the factors that may weigh against finding a tenancy are:

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The occupier pays property taxes and utilities but not a fixed amount for rent.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.
- The written contract suggests there was no intention that the provisions of the *Manufactured Home Park Tenancy Act* apply.

The arbitrator will weigh all of the factors for and against finding that a tenancy exists, even where the written contract specifies a license or tenancy agreement. It is also important to note that the passage of time alone will not change the nature of the agreement from license or tenancy.

I find that the Applicants occupation of the subject property is a license to occupy, not a tenancy. The Applicants do not pay rent and did not pay a security deposit. One of the Applicants is the nephew of the Respondents. Further, I accept that the Respondent M.B. continues to have access to a portion of the subject property.

As a tenancy has not been created, the *Residential Tenancy Act* does not apply. I therefore decline jurisdiction to consider the issues before me.

I wish to note that in the event I had found a tenancy to exist I would have canceled the Notice. The Respondent M.B. conceded that she does not have any permits or approvals to renovate the subject unit and that the work she proposes doing is cosmetic in nature and would not require vacant possession. Further, she confirmed that the property is to be sold by operation of a B.C. Supreme Court Order and that it is her intention to proceed with the sale of the property as soon as possible.

The Respondents were encouraged to seek legal counsel as to their respective rights and responsibilities pursuant to the Supreme Court Order.

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: April 26, 2018

Residential Tenancy Branch