Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL-4M

Introduction:
The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the one month Notice to End Tenancy June 28, 2018

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. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on June 28, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlords by mailing, by registered mail to where the landlords carry on business as the landlord acknowledged service of the documents. With respect to each of the applicant's claims I find as follows:

Preliminary Matters:
The landlord gave evidence that the tenant failed to correctly identify the landlord. He submitted that the correct name for the landlord is the corporate entity and the individual named is an agent of the landlord. The definition of landlord under the Residential Tenancy Act includes the following:

> "landlord", in relation to a rental unit, includes any of the following:
>
> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> (i) permits occupation of the rental unit under a tenancy agreement, or
>
> (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

I determined it was appropriate to continue with the Application as the named landlord is the landlord's agent.

Secondly, the landlord objected to the service of documents after the 14 days set out in the Rules. I agree with the submission of the landlord and determined those documents and the issues raised are not admissible in this hearing. Rule 2.2 of the Rules of Procedure provides as follows:

> 2.2 Identifying issues on the Application for Dispute Resolution
>
> The claim is limited to what is stated in the application.

The only issue raised in the Application for Dispute Resolution is whether the tenant is entitled to an order to cancel the Notice to End Tenancy dated June 28, 2018.

Issues to be Decided:
The issue whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated June 28, 2018?

Background and Evidence:
The rental unit is a single family dwelling of approximately 100 years of age. The tenancy began in October 2017. The tenant testified the rent is $800 per month due in the first few days of the month. The submission of he landlord states the rent was $900 per month for rent and utilities. The tenancy agreement is oral. The Tenant did not pay a security deposit. The tenant has done some renovation work on the rental property and deducted the cost of the work. The landlord gave evidence that the tenant has failed to fully pay the rent for July and August and they did not consent nor agree with the deductions the tenant has taken. .

Both parties agree the rental unit is located of property that is within the agricultural land reserve.

The landlord served a Notice purporting to end the tenancy on the tenant purporting to end the tenancy on June 28, 2018. The Notice is not in the approved government form. The parties agree that if the Residential Tenancy Act applies then the Notice to End Tenancy dated June 28, 2018 should be cancelled as it is not in the approved form.

Analysis:
The landlord submits that the Residential Tenancy Branch does not have jurisdiction in this matter based on the following:

- The landlord relies on section 2 and 3 of the Agricultural Land Commission Act, SBC 2002, c. 36
- The landlord relies on the Supreme Court of British Columbia case of Helgren v Campbell, 2010 BCSC 1247.

- The landlord submits that this Agricultural Land Commission Act provides a complete regime for the management and the Residential Tenancy Branch does not have jurisdiction. The Tenant disputes this.

Section 2 and 3 of the Agricultural Land Commission Act provides as follows:

> "Application of other Acts
>
> 2 (1) This Act and the regulations are not subject to any other enactment, whenever enacted, except the Interpretation Act, the Environment and Land Use Act and the Environmental Management Act and as provided in this Act.
>
> (1.1) Despite subsection (1) and section 3, if a regulation under the Water Sustainability Act requires that the commission consider a water sustainability plan in making decisions in relation to an area that is subject to the water sustainability plan, the commission must comply with the regulation.
>
> (2) Despite section 14 (2) of the Interpretation Act, this Act binds the government.
>
> Power under other Acts
> 3 A minister or an agent of the government must not exercise a power granted under another enactment except in accordance with this Act and the regulations."

The essence of the decision in Helgren v. Campbell is found in the following paragraphs:

> "[27] At the very bottom of the case are, however, certain discernible facts. Although the owners of the manufactured home were not heard from, it is clear that all they had to give was title to the trailer itself. It could not be lawfully occupied. Section 3(i)(b) of the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation* B.C. Reg. 171/2002 is clear:
>
> > (1) The following land uses are permitted in an agricultural land reserve unless otherwise prohibited by a local government bylaw or, for lands located in an agricultural land reserve that are treaty settlement lands, by a law of the applicable treaty first nation government ...
> >
> > (b) for each parcel,
> >
> > (i) one secondary suite within a single family dwelling, and
> >
> > (ii) one manufactured home, up to 9 m in width, for use by a member of the owner's immediate family[.]

[28] The *Agricultural Land Commission Act*, S.B.C. 2002, c. 36 is not subject to the *Residential Tenancy Act*:

> Application of other Acts
>
> 2. (1) This Act and the regulations are not subject to any other enactment, whenever enacted, except the *Interpretation Act,* the *Environment and Land Use Act* and the *Environmental Management Act* and as provided in this Act.
>
> (2) Despite section 14(2) of the *Interpretation Act*, this Act binds the government
>
> Power under other Acts
>
> 3. A minister or an agent of the government must not exercise a power granted under another enactment except in accordance with this Act and the regulations.

[29] Once it is established that the property was within the Agricultural Land Reserve it is clear that the *Manufactured Home Park Tenancy Act* could not apply, by definition. Section 1 of that *Act* provides:

> "manufactured home park" means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located;
>
> "manufactured home site" means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home[.]

[30] The site had not been rented or intended to be rented at any time before the respondents came onto the site. Parties who were not members of the owner's immediate family could not lawfully enter into such an agreement.

…..

[43] The Dispute Resolution Officer's effective refusal to make an adequate enquiry as to the threshold fact as to whether the land was within the Agricultural Land Reserve, led her to incorrectly determine that there was a "tenancy" within the meaning of the *Manufactured Home Park Tenancy Act*, since there was no right to possession of a manufactured home site under any agreement with a non-family member.

[44] The situation as it falls to this Court is, then, that it must make what it can of the relationship described in the materials. This was not a tenancy but an agreement by

> which Shirley Helgren agreed to allow the respondents to remain in the manufactured home she had been induced to believe the respondents owned. They had no right to be there, and the petitioners were entitled to ask them to vacate, subject only to a general legal requirement to be reasonable about it. The time during which the respondents should have vacated is long past. In submission, the respondents suggested their departure was imminent in any event."

The solicitor of the landlord acknowledged that the Helgren case dealt with the Manufactured Home Park Tenancy Act and not the Residential Tenancy Act. However, he submits the principle is the same and should be applied to the facts of this situation. He has also provided the decision of another arbitrator that has applied the Helgren case to a Residential Tenancy situation.

The parties also relied on Section 3(1)(b) of the Agricultural Land Reserve Use, Subdivision and Procedure Regulations B.C. Reg. 171/2002 includes the following:

> Permitted uses for land in an agricultural land reserve
>
> 3 (1) The following non-farm uses are permitted in an agricultural land reserve unless otherwise prohibited by a local government bylaw or, for lands located in an agricultural land reserve that are treaty settlement lands, by a law of the applicable treaty first nation government:
>
> (b) for a parcel located in Zone 1,
>
> (i) one secondary suite in a single family dwelling, and
>
> (ii) either
>
> (A) one manufactured home, up to 9 m in width, for use by a member of the owner's immediate family, or
>
> (B) accommodation that is constructed above an existing building on the farm and that has only a single level;

The tenant submitted that Policy L-08 October 26, 2018 – Activities Designated as Permitted Non-Farm Use – Residential Uses in the ALR – Zone 1 which includes the following:

> Agricultural Land Commission Act S.B.C. 2002 c. 36 Section 4.2:
>
> 4.2The following zones are established:
> (a) Zone 1, consisting of the Island Panel Region, the Okanagan Panel

Region and the South Coast Panel Region.
(b) Zone 2, consisting of all geographic areas of British Columbia not in Zone 1.

Note - The Panel Regions are described in more detail in the Schedule to the ALCA and on the Agricultural Land Commission website

Section 18(a):
18 Unless permitted under this Act,

(a) a local government, a first nation government or an authority, or a board or other agency established by a local government, a first nation government or an authority, or a person or agency that enters into an agreement under the Local Services Act may not
(i) permit non-farm use of agricultural land or permit a building to be erected on the land except for farm use, or
(ii) approve more than one residence on a parcel of land unless the additional residences are necessary for farm use,
Guideline which includes the following should by applied.

INTERPRETATION:
Subject to applicable local government bylaws, one single family residential dwelling is allowed on land in the Agricultural Land Reserve (the “ALR”). This residence is considered a single family dwelling and referred to as the “single family dwelling” in this policy. A local government may permit one single family dwelling.

The Regulation permits, unless otherwise prohibited by a local government bylaw, a secondary suite for residential purposes, wholly contained within the single family dwelling on a parcel in the ALR. The secondary suite does not need to be occupied by immediate family.

The Regulation provides for one manufactured home, in addition to the single family dwelling, on a parcel in the ALR. The manufactured home may only be occupied by the property owner’s immediate family.

The following definitions found in the Residential Tenancy Act are relevant:

"rental unit" means living accommodation rented or intended to be rented to a tenant;

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"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 licence to occupy a rental unit;

Section 2 and 4 of the Residential Tenancy Act provides as follows:

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

What this Act does not apply to

4 This Act does not apply to

(a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,

(b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

(d) living accommodation included with premises that

(i) are primarily occupied for business purposes, and

(ii) are rented under a single agreement,

(e) living accommodation occupied as vacation or travel accommodation,

(f) living accommodation provided for emergency shelter or transitional housing,

(g) living accommodation

(i) in a community care facility under the Community Care and Assisted Living Act,

(ii) in a continuing care facility under the Continuing Care Act,

(iii) in a public or private hospital under the Hospital Act,

(iv) if designated under the Mental Health Act, in a Provincial mental health facility, an observation unit or a psychiatric unit,

(v) in a housing based health facility that provides hospitality support services and personal health care, or

(vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,

(h) living accommodation in a correctional institution,

(i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,

(j) tenancy agreements to which the Manufactured Home Park Tenancy Act applies, or

(k) prescribed tenancy agreements, rental units or residential property.

Analysis:

After carefully considering all of the evidence and the submissions of both parties I determined that he Residential Tenancy Act applies and that I have jurisdiction to consider the application for the following reasons:

1. I determined the parties entered into an oral tenancy agreement as defined definitions and provisions of section 1 and 2 of the Residential Tenancy Act. The rental unit was accommodation intended to be rented to the tenant. The tenant had the right to possession of the rental unit under the oral tenancy agreement and paid rent.

2. Section 4 of the Residential Tenancy Act sets out an extensive list of what the Act does not apply to. A rental unit located in the Agricultural Land Reserve is not one of the situations which is identified as being excluded from the application of the Residential Tenancy Act..

3. I do not accept the submission of the landlord that the case of Helgren v Campbell stands for the principle that the Residential Tenancy Act does not a apply to a rental unit within the Agricultural Land Reserve for the following reasons:

a. The case dealt with the Manufactured Home Park Tenancy Act and not the Residential Tenancy Act.

b. The basis of Mr. Justice McEwen's decision is found in paragraph 28 and 29 of the decision. In paragraph 29 he set out the definition of "manufactured home park" an manufactured home site" and determined that once it was decided that the property was within the Agricultural Land Reserve it was clear that the Manufactured Home Park Act could not apply.

   In paragraph 29 he states that the site had not been rented or intended to be rented at any time. "Parties who were not members of the owner's immediate family could not lawfully enter into such an agreement." The Court has determined that a tenancy agreement has not been entered into and if it was it failed to meet the definitions of "manufactured home park" or "manufactured home site" that are necessary for the application Manufactured Home Park Tenancy Act.

   The situation in the case before me is significantly different. The relationship between the parties meets the definitions of residential tenancy in the Residential Tenancy Act as it involves an agreement to rent living accommodation to the Tenant and she obtained possession of that accommodation.

c. Paragraph 30 of the Helgren decision continues and states "…Parties who are not members of the owner's immediate family could not lawfully enter into such an agreement." This conclusion is also found in paragraph 43 of the decision. This refers back to section 1(b)(ii) of Agricultural Land Reserve Use, Subdivision an Procedure Regulation which applied to manufactured homes and has no application to the case before me.

4. I do not accept the submission of the landlord that Section 2 and 3 of the Agriculture Land Commission Act excludes the application of the Residential Tenancy Act. Section 3(1)(b) of the Agricultural Land Reserve Use, Subdivision and Procedure Regulations B.C. Reg. 171/2002 contemplates a secondary suite as a permitted non-farm use.. Policy L-08 provides for a single family residential dwelling as being a permitted use. I am not able to find any provisions in the Agricultural Land Commission Act, the Regulations or Policy Guideline that prohibits rentals or the application of the Residential Tenancy Act.

5. Neither party presented evidence at the hearing that zoning regulations prohibited the rental of the rental unit.

6. An arbitrator is not bound to follow the decision of another arbitrator. Section 64(2) provides as follows:

> 64(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

For the reasons set out I determined the decision of the previous arbitrator does not bind me and I determined it was appropriate not to follow it.

7. For the reasons set out above I determined that the Residential Tenancy Act applies and that I have jurisdiction.

8. There are few reported cases dealing with this issue. However I find support in my conclusion In Coe v. Houle, 1999 Can LII 1615 (BCSC). The case was not provided to me at the hearing but I determined it is relevant. In that case the Supreme Court of British Columbia applied the provisions of the Residential Tenancy Act to property that was in the Agricultural Land Reserve. The facts are complicated. However, the case involved the attempted sale of a portion of agricultural land but it was subject to the sellers obtaining subdivision approval. There was a second contract that involved a 99 year lease. The sellers were not able to get the subdivision approval. The Court applied the provisions of the Residential Tenancy Act even though the property in question was in the Agriculture Land Reserve. The decision includes the following: :

> "[45] Next, the plaintiffs claim that the defendants have failed to obtain the approval of the Regional District of Powell River for the lease and easements, contrary to s. 3(3) of the Residential Tenancy Act. They say that, accordingly, the lease and easements are void.
>
> [46] The defendants admit that the required approval has not been obtained, but they argue that the intended lease did not cover residential premises and thus the Residential Tenancy Act does not apply. Moreover, they note, the plaintiffs have cited the 1996 statute, whereas the events in issue occurred in 1995. The latter argument carries no weight. So far as I have discovered, the 1996 revision makes no change to the relevant provisions of the Act in force in 1995.
>
> [47] In the Act, the term "residential premises" is defined as "a dwelling unit used for residential purposes", but does not include "premises, under a single lease, occupied for business purposes with a dwelling unit attached". The term "residential property" is defined as "a building in which, and includes land on which, residential premises are situate".
>
> [48] Notwithstanding the evidence, upon which the defendants rely for the purposes of their argument, that the properties surrounding and in the vicinity of

the Property are used for a mix of agricultural, commercial and light industrial purposes, I find that the lease contemplated in the Second Contract is a lease of residential premises. There is no evidence that the zoning regulations prohibit such a use, and the fact that the Lands and Premises were intended to be used for the purpose of riding stables and related equestrian activities as well as a residence does not mean that the lease was to be a commercial lease.

[49] The term "tenancy agreement" is defined in the Act to mean:

> …an agreement, whether written or oral, express or implied, having a predetermined expiry date or not, between a landlord and tenant respecting possession of residential premises…;

[50] I find that the Second Contract, as well as the lease appended thereto, is a tenancy agreement within the meaning of the Act.

[51] The terms "landlord" and "tenant" are also defined, and they clearly apply to the defendants and plaintiffs respectively.

[52] Subsections 3(3), (6) and (7) of the Residential Tenancy Act provide that:

> (3) A landlord…must not enter into a tenancy agreement for a term exceeding 20 years…except with the prior approval, by by-law, of the municipality in which the premises are located.
>
> (6) A tenancy agreement for which prior approval is required under subsection (3) is void if it is entered into on or after June 13, 1994 and the prior approval is not obtained.
>
> (7) If a tenancy agreement is void under subsection (6),
>
> (a) the sum of all payments made by or on behalf of the tenant under the tenancy agreement is a debt owed by the landlord to the tenant, and
>
> (b) the tenant may occupy the residential premises until the later of
>
> (i) the date 6 months from the day the tenancy agreement was entered into, and
>
> (ii) one month after the sum owing under paragraph (a) is paid in full.

> [53] I find that the defendants are in violation of subsection 3(3) of the Act, and that the Second Contract is void. Accordingly, pursuant to subsection 3(7), the defendants are liable to the plaintiffs, in debt, for the aggregate of all payments made by the plaintiffs under the Second Contract, including the amounts covered by the promissory note.
>
> …
>
> [56] Mr. Coe testified that if he and Mrs. Coe had known at the start that it would not be possible to obtain a subdivision and title to the 5 Acre Parcel they would not have taken possession of the Lands and Premises. However, as I mentioned earlier, under cross-examination, he acknowledged that when he and his wife signed the First Contract they knew that the Property was within the ALR and that, in order to obtain a subdivision of the 5 Acre Parcel, the approval of the ALC had to be obtained. He also acknowledged that the defendants never guaranteed the success of the application to the ALC, and that he and Mrs. Coe "assumed the risk" of it not being approved."

Conclusion:

In conclusion I determined that the Residential Tenancy Act applies and that I have jurisdiction to hear the case. The Notice to End Tenancy given by the landlord was not in the approved form as required by the Residential Tenancy Act. As a result I ordered that the Notice to End Tenancy dated June 28, 2018 be cancelled. No order is to be made for the cost of the filing fee as The Application for Dispute Resolution does not include such a claim.

This decision is final and binding on the parties.

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: September 25, 2018

Residential Tenancy Branch