



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing with his partner who acted as the tenant's agent, and each gave affirmed testimony. Both landlords also attended, one of whom gave affirmed testimony. The landlords were also represented at the hearing by Legal Counsel and the hearing was observed by an Articled Student. The parties, or counsel, were given the opportunity to question each other and give submissions.

The hearing did not conclude on the first scheduled date and was adjourned to continue.

Jurisdiction

The landlords' Legal Counsel submitted at the commencement of the first day of the hearing that the Residential Tenancy Branch has no jurisdiction with respect to this tenancy, and referred to Section 4(d) of the *Residential Tenancy Act* which states:

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 rental property consists of about 60 acres with a house, barn, pastures and a number of trailers. The tenant lives in one of the trailers, which is owned by the landlords.

The relationship began in October, 2013, the tenant initially living in the house, and then into the trailer in April, 2014, and the tenant started a trail riding business on the property under a company name.

There are 2 portions of the property with a separate driveway for the house, which the landlords' brother now lives in, and the tenant lives in the agricultural portion next to a field. The parties entered into an agreement that the tenant will run the business and pay monthly rent for the agricultural property and the trailer. The landlords' brother pays the tenant rent of \$1,500.00 per month, and the tenant pays the landlords \$2,490.00, which equates to the tenant's rental for the difference at \$990.00 per month.

The tenant operates trail riding every year, and owns, or his company owns 14 horses, and a number of employees of the business live on the property in trailers that are not owned by the landlords. The business is actively advertised, and uses the rental address as the company address. Employees also reside on the property year around, including the tenant's son and daughter, another gentleman who also has 2 horses there, as well as 2 other people.

The tenant's company also sublets to a movie production company and the tenant's company earns \$5,000.00 per day to park movie equipment.

The rental property is used predominately for running a business, and the tenant lives there to run a business on the property. The business started in October, 2013 and the trail riding started in October, 2014.

Counsel also submits that, referring to the Residential Tenancy Policy Guidelines 14 – *Type of Tenancy: Commercial or Residential*, and 27 – *Jurisdiction*, the Residential Tenancy Branch has no jurisdiction to hear or decide on matters where the premises are used primarily for business purposes and to live on the property under a single agreement.

The tenant disagrees that his company gets \$5,000.00 per day to park movie equipment. The tenant talked to the landlord about it and if she did not agree, she never said so. The production company completed upgrades to gravel and culverts. The tenant would have denied the use of the property if the landlord said she had a problem with it. They were only at the property for 3 days in one year and 3 days in

the second year. There was no production of movies at all. The tenant has huge bills feeding horses and has no income from the property at all through winter.

The tenant's partner submitted that the lease was for the house and buildings at \$2,490.00 per month and the tenant sublet the house with the landlord's permission.

The tenant does not operate the business in the winter; weather is not suitable for winter riding due to risks. The tenant has not boarded any horses since June, 2019 and the company website was updated in March removing the boarding part.

Two of the people living on the property are the tenant's kids, and 2 others work on the ranch. The tenant is 69 years old and cannot do it all on his own. It's a working ranch, but the primary purpose is residential. The evidence will show how much the business has worked: about 4 months a year with not a lot of income and the tenant barely makes ends meet. The trail rides are to assist with costs to pay the rent. It's not a big company and the tenant could easily dissolve it.

On May 9, 2019 the landlord sent an email to the tenant stating that she was removing the house from the lease and that a lawyer would be preparing a commercial agreement. The tenant and partner asked to talk about it 3 times, but the landlord refused, saying only that a commercial agreement was required by her insurance company.

I found that, due to the contrary submissions on the issue of jurisdiction it was necessary to hear the testimony of the parties while reviewing the evidence, and I reserved my Decision until the testimony was heard.

All evidence of the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Does the *Residential Tenancy Act* apply to this tenancy?
- If the *Residential Tenancy Act* does apply to this tenancy, have the landlords established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this tenancy began in October, 2013, and the tenant still resides in the rental unit. Rent in the amount of \$2,490.00 per month is payable on the 1st day of each month. The landlord did not collect a security deposit or a pet damage deposit from the tenant. The rental unit is a ranch and a tenancy agreement exists but a copy has not been provided as evidence for this hearing.

The landlord further testified that on July 16, 2019 the landlord served the tenant with a One Month Notice to End Tenancy for Cause by taping it to the door of the rental home. A copy has been provided for this hearing and it is dated July 16, 2019 and contains an effective date of vacancy of August 31, 2019. The reasons for issuing are:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has:
 - put the landlord's property at significant risk.

The landlords do not reside on the property, and currently there are 5 trailers parked on the site, and photographs have been provided for this hearing. The landlord testified that she has been corresponding back and forth with her insurance broker for the last 6 months. The landlord contacted the tenant by email trying to work it out, and the tenant said that he needed to have 2 trailers, but the landlord's insurance company didn't want to insure it. There is no insurance for trailers and campers on the property. In October, 2016 there were 2 additional trailers on the property and the insurance company said that 2 could stay as long as they get tenant's insurance. The tenant agreed to obtain ICBC insurance and residential tenancy insurance for liability, and that would be okay for 2 trailers, but that didn't happen. The landlord thought the tenant had purchased it, but the landlord didn't ask for proof. The tenants tried to get the insurance last month, but due to fires, they couldn't obtain insurance. The landlords' broker told the landlord that if the trailers don't move out, they won't renew the landlords' insurance, which is up for renewal in November, and they the landlords' mortgage will be in jeopardy.

From November, 2016 to today, it grew to 5 illegitimate trailers in addition to the tenant's trailer, without authorization from the landlords, none of which had residential tenancy insurance which is what the landlords' insurance company asked for. The landlord sent an email to the tenant stating that 2 trailers could stay as long as they got liability insurance, but that didn't happen.

Initially in April, 2019 the landlord was trying to get the tenants to get the tenant to get residential tenancy insurance. On June 20, 2019 the landlord emailed the tenant specifying what the insurance company was asking for, which was ICBC style insurance for his trailer and tenant insurance, and each trailer should get the same. Then in July, 2019 the landlord was becoming panicked because the insurance company and broker were becoming threatening about moving the trailers or getting the insurance. A by-law officer from the Regional District said that trailers can only be on the property for 30 days, but there are people living there full time and have been there for 3 years.

The tenant's partner told the landlord that she gave eviction notices to 2 of the tenants and that the Regional District won't speak to the tenant, only the property owner. The tenant and partner told the landlord that they started looking in July and August for an insurance policy, but tenant insurance wasn't being issued by any insurance company due to fire danger, which depends on the time of year. The tenants had waivers signed for each of the trailers, which is appreciated by the landlord's insurance company, but they still need insurance. The tenant's partner said they were covered by their horse insurance for their company, but the landlord explained that the required insurance is specific to the dwellings. To just add people on their company insurance as additionally insured does not remove the requirement to have tenant insurance. The landlord has a copy of the tenant's company insurance, but the landlord's insurance broker said that the insurance has to be specific to each trailer. The landlord's insurance is up for renewal in November, and the landlord is still being told that regardless of waivers, they may not renew the landlord's insurance due to risk so the trailers can't be on the property.

Now the landlords are being fined by the Regional District for having too many trailers parked on the property in violation of a bylaw; a person cannot create a trailer park, which will put the landlords in jeopardy for possibly not getting the insurance renewed. Some people are living in the trailers full time, using water and power. On August 13, 2019 the landlords received an email from the Regional District, a copy of which has been provided for this hearing, stating that the fine is \$500.00 and each day the property is in contravention a separate penalty may be issued. The landlord forwarded the email to the tenant's partner. The landlord does not know when the bylaw officers will be attending, but when they do they will assumingly post a notice on trailers.

The landlord further testified that the landlords' property is at significant risk by having so many additional trailers on the property and people living in them full time, and the landlords have no knowledge of new trailers coming there. The landlord does not know the people, and the landlords are not in control whatsoever of the people who attend on the site.

The parties have a residential agreement, not a business lease. During the first week of August, the landlord was cc'd by a Location Scout of a production company. The landlord called the Location Scout who said she was having trouble getting ahold of the tenant's partner, so while going over the paperwork from a year or so ago, the scout came up with the landlord's email address. The landlord had no previous knowledge that the property was being used for a production company, and the Location Scout said they were only supposed to deal with the property owner, but that has never happened. The landlord was not against the tenants getting paid for it, but the landlords needed to be added as additionally insured. Either knowingly or not, the tenants represented that they had permission.

The tenant's partner (LH) testified that during June and July, 2019 the tenant and the tenant's partner went to all insurance agencies and everyone advised that tenant insurance was optional, not required, and the tenant could not get any insurance because of fires, and she told the landlord that. That was before the landlord served the One Month Notice to End Tenancy for Cause. Copies of the applications have been provided as evidence for this hearing. On or about July 12 or 13, 2019, the tenant served notices of eviction on 2 tenants because the tenant could not get insurance to comply what the landlord's insurance agent was asking for.

The tenant's company insurance covered everything horse related, but not the movie company. The company insurance also covers a lot of risks including 10 horses and possible risks with tenants. Not all of the 14 horses on the list are used for trail rides; some are privately owned and not ridden by the public. Three of the horses are owned by the tenant's company, and the insurance policy insures up to 5 non-owned by the company. Two are not owned by the tenant's company but are used for business purposes, and others are boarded for those who work on the property.

The movie company had their own insurance which covered their activities, their people, and have a policy they carry when they are out doing shoots. The landlords and the tenant's company are covered on that insurance, and a copy has been provided for this hearing. The movie company people were told that the tenant is not the property owner. Both times when the movie company came to park on the property, the tenant told the landlord by telephone. The movie company emailed the tenant to ensure all information was correct, including information about the owner last year and again this year.

The One Month Notice to End Tenancy for Cause has a letter attached to it from the landlord's lawyer stating, in part that to continue to occupy the premises, the tenant

must enter into a new lease agreement, and must obtain signed waivers from all customers, volunteers and employees of the tenant's business. It also states that the tenant must provide the landlord with a copy of insurance listing the landlord as an additional insured. The tenant was not able to get the insurance that the landlord was demanding; it's an unprotected area.

With respect to having an unreasonable number of occupants on the property, the tenant wants to comply. The tenant's partner testified that according to permitted uses and regulations, the property can have up to 10 temporary worker housing units. The bylaw officers have not returned the tenant's calls and no one has arrived on the property to speak to the tenant. The property is in the Agricultural Land Reserve and must comply with rules and regulations, which neither the tenant nor the tenant's partner ever saw before August, 2019. However, the application must be made by the land owner, not the tenant. The landlord has only quoted the ALR rules, and the Regional District requirement wasn't an issue until August.

The tenant's daughter and son each have trailers and 2 others, as well as a temporary RV belonging to a person who does not reside there fulltime, but on weekends for the summer months and will soon be leaving. This is the first year.

The landlord has known about the tenant's business company since the beginning of the tenancy. Indemnities and waivers of liability have been given, and this is the first the tenant's partner has heard that they are not good enough. The landlord did not tell her or the tenant that. It's never been this kind of issue and the landlord has renewed her insurance every year. Tenant insurance is not mandatory.

The tenant (JW) testified that every person since 2015 has been on the property temporarily and left within 6 months to a year except one person. The tenant's son and daughter have been there less than a year. Two others have trailers on the property, but are not fulltime residents.

Two weeks before committing the site location to the movie company, the tenant phoned the landlord. The landlord's brother also lives on the property, and they both know that no one has been a fulltime resident. They discussed having temporary worker housing, but the landlord didn't agree. The tenant knows he needs the landlord's permission and each time it's been withheld.

Closing Submissions of the Landlords' Legal Counsel

The One Month Notice to End Tenancy for Cause contains 2 reasons for ending the tenancy. With respect to an unreasonable number of occupants, nowhere in the tenancy agreement is there any agreement for multiple people, and 5 additional occupants is not reasonable. It's only supposed to be the tenant, and some years later 2 more were added without the landlord's consent or knowledge, then up to 5 people and trailers there full time. The landlord's insurance renewal was based on 2 extra trailers, not 5.

With respect to the 2nd reason for ending the tenancy, Counsel submits that the landlords' property is at risk. The landlord has made requests for tenant insurance and the tenant hasn't done so. The tenant was put on notice of that in 2016, but didn't and brought more people onto the property. If all trailers were to get tenant insurance, the landlords would be able to get insured, but may be fined due to the by-law. As a result of the tenant's failure to get tenant insurance, now the landlords may not be able to get their own insurance, which is critical for the property and the landlords' mortgage.

Closing Submissions of the Tenant's Partner

The rental property consists of 65 acres of land and the tenant can't take care of the ranch himself; others help maintain it. Eviction notices have been given to 2 trailers, and the tenant and partner have done what they can to get insurance and comply. They want to comply and don't want the landlords to be in trouble with the Regional District, but any application to the Regional District has to be made by the owner, not the tenant. The tenant tried to confirm what the by-laws say, which may require calculations for the actual footprint and whether or not it exceeds what the Regional District allows. The tenant is willing to do that, but the landlord wants the tenant to move out.

The tenant's partner and the tenant have talked to lots of people, and a landlord cannot force a tenant to get tenant insurance. If they could have obtained it, they would have.

Analysis - Jurisdiction

On the issue of jurisdiction, I refer to the Residential Tenancy Policy Guidelines 14 and 27 as set out by the landlords' counsel. Guideline 14 – *Type of Tenancy: Commercial or Residential* suggests that an Arbitrator will consider what the “predominant purpose” of the use of the premises is to make the determination of whether the premises are

primarily occupied for business purposes or not. It suggests that some factors could be relative square footage of the business use compared to the residential use, or employee and client presence at the premises, or visible evidence of the business use being carried on at the premises. Those are useful suggestions and logical. By the same logic, I think that the amount of business use is equally a relative factor. Renting to the production company for 3 days each of 2 years is not a predominant factor. Trail riding only happens for about 4 months per year, assumingly during the same time as the production company. There are horses on the property, some of which do not belong to the tenant's company or the tenant, but I cannot find in the circumstances that doing so makes it predominantly business purposes. The tenant has horses on the property as well. The tenant also sublets the house to the landlords' brother, collects rent and pays rent to the landlords. The Guideline also states:

Tenancies Established for the Purpose of Re-renting

Sometimes a tenant will rent out a number of rental units or manufactured home sites and re-rent them to different tenants. It has been argued that there is a "commercial tenancy" between the landlord and the "head tenant" and that an Arbitrator has no jurisdiction.

The Court in BC have indicated at these relationships will usually be governed by the *Residential Tenancy Act*. It is the nature or type of property that is regulated by the legislation. If the type of property comes within the definitions in the legislation and does not fall within any of the exceptions in the legislation, the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* will govern.

Guideline 27 – Jurisdiction contains a statement that:

"The distinction is whether the premises are business premises which include an attached dwelling unit or whether the premises are residential in nature with a lesser business purpose. The bylaws of a city may be a factor in considering whether the premises are primarily occupied for a business purpose.

However, even in combining all of the business uses, which primarily occur during a 4-month period each year, I am not satisfied that the rental property is used primarily for business purposes, and I find that the *Residential Tenancy Act* applies.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month

Notice to End Tenancy for Cause (the Notice) and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

The issue of having the correct insurance policies is not my primary concern, but of course is of great importance to the landlords.

With respect to the first reason for issuing the Notice: Tenant has allowed an unreasonable number of occupants in the unit/site; I have reviewed all of the evidentiary material, and refer to a string of emails exchanged between the landlord and the tenant's partner. It states that the landlord made it clear in 2016 that people were not permitted to camp on the property. The photographs provided by the landlord show that several campers are on the property. Although the tenant's partner and the tenant testified that some are leaving or not being used full time, there is no question that at least some of them have been used part time or full time without the landlord's consent.

I find that the landlord has established that the tenant has allowed an unreasonable number of occupants on the property and it is not necessary to address the second reason for issuing the Notice. The tenant's application to cancel the Notice is dismissed.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord.

At the conclusion of the last day of the hearing the landlord stated that she would be content with an effective date of vacancy of October 31, 2019 if an Order of Possession is issued, and I so order.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlords effective at 1:00 p.m. on October 31, 2019.

This order is final and binding and may be enforced.

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: October 16, 2019

Residential Tenancy Branch