Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 685320 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: AAT CNL FFT LRE MNDCT OLC

Introduction

In this dispute, the tenant sought, *inter alia,* an order dismissing a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to s. 49 of the *Residential Tenancy Act* (the "Act"). Additional claims are noted below.

The tenant applied for dispute resolution on December 5, 2019 and a dispute resolution hearing was held on January 27, 2020. The tenant and her representative, and the landlord and her witnesses, attended the hearing. They were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Neither party raised any issues with respect to the service of evidence.

I have only considered evidence relevant to the preliminary issue and the issues of this application, so not all of the parties' testimony will appear in this decision.

Preliminary Issue: Dismissal of Claims Unrelated to the Notice

Rule 2.3 of the *Rules of Procedure,* under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the tenant's application, I find that the claims other than the application to dispute the Notice are unrelated to the central claim. The most important matter that must be dealt here with is determining whether this tenancy will continue.

As such, the tenant's other claims – other than the claim for recovery of the filing fee – are dismissed with leave to reapply. She remains at liberty to reapply for those claims.

Issues

1. Is the tenant entitled to an order cancelling the Notice?

2. Is the tenant entitled to recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy started in November 2016 and that the monthly rent is $700.00. The landlord's husband passed away recently, and the landlord is in the process of selling off her assets, including the rental unit. The rental unit was variously described as a "floating office" and a "floating home." It is a structure that floats on water and is moored to a fixed structure on land or as part of the marina. The rental unit is by all accounts quite small (perhaps in the 200 to 300 square foot range, though the parties were not certain), but it has a little kitchen and is hooked up to water and electricity.

On November 22, 2019, the landlord issued the Notice to the tenant. A copy of the Notice was submitted into evidence. I note that one of the two landlords listed in the Notice is a numbered company, which has been added to the style of cause (i.e., the cover page which lists the parties to this dispute). Page two of the Notice states, and the landlord confirmed and testified to this, that the tenancy was ending because, as indicated by an "X" check-mark:

> All of the conditions of the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The landlord further testified that the buyer intends to "tow it to his premises" because "he needs it for an office." She clarified that the purchaser in fact now owns the floating property.

The tenant's representative argued that the conditions of the sale have not been met in order for the Notice to be effective, and she submitted that the landlord has repeatedly referred to the property as a "floating office" to "distract" from the importance of the residential aspect of the property. It is, she submitted, not so much an office as it is the tenant's home. Indeed, she argued that the so-called floating office has been the tenant's primary residence since 2016, and a sometime-residence to a couple before the tenant moved in. The previous couple were whale watchers.

In addition, the tenant's representative argued that the Notice was issued in bad faith. She reiterated the conditions of the sale have not necessarily been met and argued that the terms included in the Bill of Sale (which was submitted into evidence) are vague and that they do not state that the buyer intends to occupy the rental unit. I note that the Bill of Sale, which references a corporate landlord – as opposed to an individual person – does not include any references to a tenant. It also refers to the property as a "vessel" and which is described as a "home built floating office." Finally, it states that "The above described vessel is free and clear of all liens and encumbrances."

Both parties provided rebuttal arguments, with some emphasis being on the description of the property and the purchaser's intended use of the property.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a notice to end the tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The Notice in this dispute was issued under s. 49(5) of the Act which states that

> A landlord may end a tenancy in respect of a rental unit if
>
> (a) the landlord enters into an agreement in good faith to sell the rental unit,
>
> (b) all the conditions on which the sale depends have been satisfied, and
>
> (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
>
> > (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

In this dispute, there is no evidence to establish that the requirement under s. 49(5)(c) was met. The Bill of Sale makes no mention of the fact that there is a person living on the rental unit. And, while the landlord testified that the purchaser intends to use the rental unit as an office (and I have no reason to doubt the landlord's testimony), it is compulsory for a purchaser to actually provide written notice to the selling landlord that the tenancy must end, and, that it must end for the reasons permitted under the Act. That having been said, it should be noted that "to occupy the rental unit" means to live in or reside in the rental unit, not use it as an office. Finally, while I am empathetic to the landlord's interests in devolving her property and moving on with her life after the passing of her partner, the tenant's rights must also be considered.

It should be mentioned that there was a divergence of interpretation on whether the floating structure was a "floating home" or a "floating office." What matters is the *purpose* of the property: s.1 of the Act defines "rental unit" as living accommodation rented or intended to be rented to a tenant. The landlord did dispute that the tenant is living on the floating structure, and the fact that there is a kitchen supports a conclusion that the floating home, or floating office, is a rental unit. Much like a duck (which also floats on water), if it looks like a rental unit, is rented as a living accommodation, and appears to operate as a living accommodation, then it is a rental unit.

Finally, I note that the landlord, in her cover letter included with additional documentary evidence, stated that "I do believe that a floating unit in a marina is not under the jurisdiction of the RTB." She may be correct. However, the onus is on the party who disputes jurisdiction to provide submissions and supporting evidence for their case. In some cases, float homes do not fall under the jurisdiction, but in other cases, they do. (See *Residential Tenancy Policy Guideline 27 "Jurisdiction.)* Regardless, in the absence of any argument as why I am without jurisdiction, I make this decision on the assumption that the Act applies to this tenancy. That having been, should the parties find themselves in a subsequent dispute resolution hearing, they should be prepared to argue their respective positions as to whether the Act may, or may not, apply.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of establishing, or proving, that all the legal requirements under s. 49(5) were met when issuing the Notice. As such, the Notice is hereby

cancelled, and it is of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

As the tenant was successful with this aspect of her application, she is entitled to recovery of the filing fee in the amount of $100.00, pursuant to s. 72 of the Act. A monetary order for the tenant is issued in conjunction with this decision.

Conclusion

I hereby order that the Notice is cancelled and is of no force or effect. The tenancy continues until it is ended in accordance with the Act.

I grant the tenant a monetary order in the amount of $100.00, which must be served on the landlords. If necessary, the order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act.

Dated: January 27, 2020

Residential Tenancy Branch