Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

In this dispute, the applicant sought to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to section 49 of the *Residential Tenancy Act* (the "Act").

The applicant applied for dispute resolution on February 11, 2020 and a dispute resolution hearing was held, by of telephone conference, on April 7, 2020. The applicant, their lawyer, and the respondent attended the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

I have reviewed evidence submitted that met the *Rules of Procedure,* under the Act, and to which I was referred, but have only considered evidence relevant to the preliminary issue of this application.

Preliminary Issue: Applicability of the Act

1. Background and Evidence

The applicant resides in a log cabin located on land which is leased from the respondent. (The actual property owner is a gentleman residing in Germany. The respondent in this dispute is a soon-to-be joint owner and is for all intents acting as the owner's agent.)

A lease agreement, which was submitted into evidence, reflects an agreement between the applicant's late husband and the actual property owner, whereby the late husband (referred to as a "tenant") leased the property from the actual property owner (referred to as a "landlord" within the lease agreement). The lease commenced on January 1, 2008 and is to end on December 31, 2027. Monthly rent for the lease was $300.00.

At term 11 of the lease, the term indicates that the tenant is to only use the premises "for the purposes of a residence." I note that the final term of the lease indicates that the most current version (as it then was) of the *Manufactured Home Pad Tenancy Agreement (BC)* is part of the lease agreement; a copy of this agreement was provided, and it refers to the application of the *Manufactured Home Park Tenancy Agreement*. The agreement appears to have then been signed on March 28, 2009.

The log cabin was purportedly constructed by the applicant's late husband and was "built with [her husband's] own money." The husband passed away and the applicant inherited the cabin. In his submissions, the respondent noted that the log cabin is a "built" home, not a modular home, and it sits on a permanent foundation.

In his evidence, the respondent provided a copy of a property assessment from BC Assessment. He argued that the land and the cabin are owned by the respondent. I note that the description of property on the property assessment matches the description referenced on the lease agreement. However, the lease agreement refers to a specific, designated portion of land that is leased, namely, "Lot 13." The property assessment covers the entire property on which lot 13 is but one of many other lots.

2. Analysis

In this dispute, the Notice was ostensibly issued under section 49(3) of the Act. A notice to end a tenancy may be issued by a landlord under this section when "A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

A "rental unit" is defined in section 1 of the Act to mean "living accommodation rented or intended to be rented to a tenant." While the lease agreement establishes that land is leased to the applicant (or, to the applicant's estate), it cannot be said that the land is "living accommodation" by any plain language meaning of the phrase, nor would I find it to mean as such when applying the principles of statutory interpretation.

The respondent argued that they are the rightful owner of both the land and the log cabin, but he provided no proof that they are the owners of the log cabin, nor did they provide a satisfactory explanation to counter the applicant's testimony about her late husband building the house with his own money. The property assessment document establishes that the land is owned by the respondent (or, the actual property owner, as it were), and it reveals value in both land and "buildings" on the property, but it does not establish that the respondent owns the log cabin specifically. And, in the absence of any

other evidence, taking into account the lease agreement, I find that it is more likely than not that the log cabin is owned by the applicant, and that the log cabin in which she resides is not a “rental unit” for the purposes of the Act.

While I recognize, and have considered, the submissions of tenant’s counsel as to why the Act does not apply, given my finding as to the non-existence of a rental unit, I will not address those submissions further.

As the Notice was issued under the Act for a rental unit that I find does not exist, it follows that the Notice is of no force or effect. As such, the Notice is hereby cancelled.

Finally, I find that the legal relationship between the parties does not fall within the jurisdiction of the Act. Rather, it likely falls within the jurisdiction of the *Manufactured Home Park Tenancy Act.* However, because the notice to end the tenancy was not issued under this statute, I make no further finding of fact or law on this point.

Conclusion

The application is granted, and I cancel the Notice; the Notice is of no force or effect.

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

Dated: April 8, 2020

Residential Tenancy Branch