



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an Application for Dispute Resolution filed under the *Residential Tenancy Act* (the “Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued December 7, 2020. The matter was set for a conference call.

The Respondent, the Respondent’s son (the “Respondent”), the Applicant and the Applicant’s Counsel (the “Applicant”) attended the hearing and were each affirmed to be truthful in their testimony. All parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Preliminary Matter- Jurisdiction

Jurisdictional issues were brought up at the outset of the hearing.

The Applicant testified that they did not believe that the Respondent had the right to end this tenancy under the Residential Tenancy Act as this is a commercial tenancy, not a residential tenancy. The Applicant testified that they entered a commercial agreement with the previous owner of the property in 2010 and that it was and has always been their intent to rent the 3-acre property mainly for business purposes. The Applicant

testified that they have been running a trucking and farming business on the property for the past 10 years. The applicant submitted a copy of the lease agreement into documentary evidence.

The Respondents testified that they had purchased the property in April 2012 and that the sale agreement was that they were to receive vacant possession of the property. The Respondent testified that when they took possession of the property, these tenants were still on the land and that they had entered into a verbal agreement with them to stay on the property.

The Respondents testified that the previous owner's rental agreement did not apply to this tenancy as that agreement had expired.

The parties agreed that there was no new written tenancy agreement signed between them when the ownership of the property changed hands.

The Applicant testified that the original lease is still active, as it included a term that allowed the initial one-year fixed term of the lease to roll into a month-to-month lease and that the lease agreement was inherited by the new owner.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

During this hearing, I heard conflicting verbal testimony from the parties as to whether or not their living arrangement constituted a residential tenancy agreement. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, that would be the Applicant.

In this case, the Applicant has submitted a copy of the lease agreement they signed for this property in May 2010. I have reviewed this lease agreement, and overall, I find that the intent of the lease agreement was to rent this land to the Applicant for the primary reason of running a trucking and farming business.

Section 4 of the *Act* states the following regarding property rental for business purposes:

“What this Act does not apply to

- 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,”

Pursuant to section 4(d) of the *Act*, I must decline to accept jurisdiction over the Applicant’s dispute with the Respondent as this rental property was primarily occupied for business purposes.

Conclusion

For the reason stated above, I decline jurisdiction to resolve this dispute. I have made no determination on the merits of the Applicants application. Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

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: March 10, 2021

Residential Tenancy Branch