Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, LRE, OLC, FFT**

Introduction
This hearing was reconvened following a previous hearing on August 25, 2022 that was adjourned by this arbitrator as a potential settlement of the issues was being explored.

This hearing dealt with an application pursuant the *Residential Tenancy Act* (the "*Act*") for:

- An order to cancel a 2 Month Notice to End Tenancy for Landlord's Use pursuant to sections 49 and 55;
- An order suspending the landlord's right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both applicants attended the hearing, and the respondent SR attended the hearing accompanied by his sisters, PG and PD. The respondent KR did not attend the previous hearing; however a copy of the Notice of Dispute Resolution Proceedings was sent via regular mail to KR by the Residential Tenancy Branch.

At the commencement of the hearing, the applicants advised me that they have not yet secured another residence and that they still disputed the notice to end tenancy. As a result, I heard the merits of the application before me.

Issue(s) to be Decided
Is the tenancy agreement between the parties a residential tenancy or a commercial tenancy?
If a residential tenancy, has the landlord provided sufficient evidence to establish the notice to end tenancy was served in good faith?

Background and Evidence
At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In

accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree that the rental property is a five-acre farm with a residence on it. There is a single agreement between the parties regarding both the agricultural land and the residence. The first fixed term 2-year tenancy agreement commenced on June 1, 2019 with rent set at $3,150.00 per month, payable on the first day of each month. The second tenancy agreement commenced May 31, 2020, set to expire on May 31, 2021. Rent was set at $2,950.00 per month on the second tenancy agreement. Both parties confirmed that there is no separate agreement between them specific to the agricultural land – the residence and the farm were leased to the applicants on the same residential tenancy agreements.

The respondent confirms that the property is situated within the ALR, or British Columbia's agricultural Land Reserve. It is zoned for farming and the landlord is aware that farming activity must take place on the land in order for the property to remain in the ALR. A yearly application must be made to BC Assessment in order to retain farm status, similar to doing taxes.

When the applicants applied to live on the property, the respondent was happy with them as they were looking for people with horses or animals who used hay. Keeping the status as a farm was important to the respondent, as the acknowledge they were only getting 35 bales of hay from the farm yearly. The respondent's sister testified that she is also a farmer and considered growing cherries or other fruit on the property.

The applicants testified that the arrangement for having the residence and farm benefitted them as well as the respondent. The applicant LA is a professional equine certified coach and trainer. They required the full five acres of the property to conduct their business with the horses and other animals. They raise chickens, rabbits, horses and mini horses on the property. LA has also opened an animal health clinic on the property. They must also yearly prove to the government that they derive income from the agricultural land. The primary source of income is raising horses which was jeopardized when the respondent served them with the notice to end tenancy.

The applicants argue that they were asked by the respondent to renew their yearly farm classification lease with BC Assessment on March 15th to qualify for preferential tax from the government. This happened right before the respondent served them with the 2 Month Notice to End Tenancy for Landlord's Use on June 10th.

Analysis

Section 4 of the Residential Tenancy Act describes situations where the Residential Tenancy Act does not apply.

Section 4(d) of the Act states that the Residential Tenancy Act does not apply to living accommodations included with premises that

i) Are primarily occupied for business purposes, and
ii) Are rented under a single agreement.

Residential Tenancy Policy Guideline PG-14 [Type of Tenancy: Commercial or Residential] provides guidance to parties regarding the relevant issues in determining whether the Residential Tenancy Act applies to a living accommodation. It states:

> *Neither the Residential Tenancy Act nor the Manufactured Home Park Tenancy Act applies to a commercial tenancy. Commercial tenancies are usually those associated with a business operation like a store or an office. If an arbitrator determines that the tenancy in question in arbitration is a commercial one, the arbitrator will decline to proceed due to a lack of jurisdiction. For more information about an arbitrator's jurisdiction generally, see Policy Guideline 27 - "Jurisdiction."*
>
> *Sometimes a tenant will use a residence for business purposes or will live in a premises covered by a commercial tenancy agreement. The Residential Tenancy Act provides that the Act does not apply to "living accommodation included with premises that (i) are primarily occupied for business purposes, and (ii) are rented under a single agreement.*
>
> *To determine whether the premises are primarily occupied for business purposes or not, an arbitrator will consider what the "predominant purpose" of the use of the premises is.*
>
> *Some factors used in that consideration are: relative square footage of the business use compared to the residential use, employee and client presence at the premises, and visible evidence of the business use being carried on at the premises.*

Based on the evidence before me, I find this tenancy agreement falls under section 4(d) and that the Residential Tenancy Act does not apply. I make this finding based on the following factors:

First, the parties agree that the property is located within the Agricultural Land Reserve (ALR) and that the land must produce income to qualify as farm status. Yearly, the land's ability to produce income by farming is evaluated and assessed by a government agency. Moreover, the applicant gave undisputed testimony that there must be a primary source of income from the land (raising horses) and a secondary source (raising chickens and rabbits).

There is no disagreement that the applicants are raising livestock on the property. I have viewed the photos provided by the applicants which include pictures of pastures, barns, and chicken houses, and I find it reasonable that the farm occupies the greater part of the property, as compared to the residence. The photos of the clinic are also indicative of business transactions taking place on the property. Accordingly, I find the premises are predominantly occupied for business purposes. The residential aspect of the property is secondary to the business aspect.

Second, the parties agree that there is no separate agreement between them regarding the agricultural land and the residence. It is a single agreement that covers both aspects of the rental property. At the hearing, the parties each confirmed that the farm portion of the land could not be separated from the residence and that they are leased together. The single agreement clearly meets the definition of *"living accommodations included with premises that are primarily occupied for business purposes, and are rented under a single agreement."* Consequently, I find this tenancy agreement falls under section 4(d) and that the Residential Tenancy Act does not apply.

Conclusion

I decline to rule on this matter as I have no jurisdiction to consider this application.

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 01, 2022

Residential Tenancy Branch