



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, FFT

Introduction

On January 16, 2023, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The matter was set for a conference call hearing. The Landlord and the Tenants attended the teleconference hearing.

The parties testified that they have exchanged the documentary evidence before me. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

The Applicant J.J. testified that there is no tenancy agreement and there is no monthly rent to be paid to the respondent.

The Respondent testified that the tenancy began on August 18, 2017, after he took ownership of 94 acres of farmland with a house on it. The Respondent stated that the Tenant is to pay \$800.00 by the first day of each month. The Respondent did not prepare a tenancy agreement in writing and relies on a lease document as the basis for the tenancy. The Respondent secured a mortgage for \$224000.00 which went towards paying off the amount the Applicants had owing on the property. The Respondent also was to pay the Applicants the amount of \$65,000.00. The Respondent stated that he made payments to the Applicants over a two-year period of time with the last payment being made on December 20, 2018.

The Respondent provided a copy of a document titled Farm Classification Lease Form. The Form states that the use of the leased land is for pasture and crop. Included is land, farm buildings, and a house. The term of the lease is for a three-year period starting August 18, 2017, to August 31, 2020.

The Applicant testified that she owns the property, and she never received any payments from the Respondent. She stated that the Respondent was brought on board to secure financing and the property was to be returned to the Applicants.

The Applicants stated that they have hired a lawyer and will be filing a claim against the Respondent at the Supreme Court.

Section 55 of the Act provides if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy regarding non payment of rent, and the director dismisses the tenant's application or upholds the landlord's notice; the director must grant to the landlord an order of possession of the rental unit and an order requiring the payment of the unpaid rent.

The 10 Day notice issued by the Landlord provides that the Tenant owes \$39,200.00 in unpaid rent. Section 58(2) of the *Residential Tenancy Act* provides that the director must not determine disputes involving claims for debts or damages if the monetary amount claimed exceeds the limit set out in the Small Claims Act. The limit is currently \$35,000. If a claim for debts or damages exceeds the small claims limit, a person must apply to the BC Supreme Court. The court then determines whether it will hear and determine the dispute or order that the director hear and determine the dispute.

Issues to be Decided

- Does the Director have jurisdiction under the *Act* to resolve the dispute?

Analysis

Residential Tenancy Branch Policy Guideline # 14 Type of Tenancy: Commercial or Residential provides the following:

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.

Residential Tenancy Branch Policy Guideline # 27 Jurisdiction is intended to guide Residential Tenancy Branch staff and the public in understanding jurisdiction of the Director appointed under the Residential Tenancy Act. The Guideline provides information on ownership as follows:

TRANSFERRING OWNERSHIP

A tenancy agreement transfers a landlord's possessory rights to a tenant. It does not transfer an ownership interest. If a dispute is over the transfer of ownership, the director does not have jurisdiction. In deciding whether an agreement transfers an ownership interest, an arbitrator may consider whether:

- money exchanged was rent or was applied to a purchase price;*
- the agreement transferred an interest higher than the right to possession;*
- there was a right to purchase in a tenancy agreement and whether it was exercised.*

Based on the evidence before me, the testimony of the Applicant and Respondent and on a balance of probabilities I make the following finding:

I find that the parties entered into a lease agreement for the use of 94 acres for the purpose of pasture and crop. The lease includes Land, Farm buildings and a House. I find that the lease agreement the Respondent is relying on as a tenancy agreement is more aligned with commercial / farm use agreement for the property that includes a premises on the property. I am not persuaded that the Act applies, and I decline jurisdiction to resolve the dispute.

Even if I am incorrect, the Tenants testified that they have a right of ownership of the property and that the Respondent failed to pay them \$65,000.00.

I find that it is more likely than not that the Tenants have not been paying monthly rent to the Landlord as the \$39,200.00 in rent the Respondent is seeking amounts to approximately four years of unpaid rent, or approximately 49 rent payments. There is no written tenancy agreement other than the Farm Classification Lease Form.

Based on the testimony before me, I find that a sale and lease agreement reached by the parties contained more terms than a right of possession under a tenancy agreement as compensation appears to have been owed based on a sale agreement and then a lease for a farm. In these circumstances, I again find that I do not have jurisdiction to resolve this dispute.

The Tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 10, 2022, is dismissed as I find no jurisdiction under the Act to resolve this dispute.

If the Applicant or Respondent pursue their lease arrangement/ ownership dispute and /or monetary claims through the Court; the BC Supreme Court may order that the director must hear and determine the dispute. If that occurs, the director can make an order for unpaid rent that is over \$35,000.

Conclusion

I find that the parties entered into an agreement regarding the purchase and then lease of a 94-acre farm property containing a residence.

I find the lease agreement is more aligned with commercial / farm use agreement for the property rather than a residential tenancy arrangement and I find that the sale agreement and lease agreement reached by the parties contained more terms than a right of possession under a tenancy agreement. In these circumstances, I find that I do not have jurisdiction to resolve this dispute.

The 10 Day Notice dated November 10, 2022, is set aside and the Tenants' application is dismissed.

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 1, 2023