Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

The tenants apply to cancel a notice purporting to end their tenancies and for an order that the landlord comply with the law or the tenancy agreement.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The spelling of the tenant EM's last name in the application was corrected at the second hearing.

Between hearing dates the landlord and four of the six tenants; JA, SA, SR and MM reached a settlement of this matter. The tenants DW and EM have not settled the application with the landlord and so the matter proceeded with them as the sole remaining applicants.

Issue(s) to be Decided

The tenants argue that their relationship with the landlord is governed by the provisions of the *Residential Tenancy Act* (the "*RTA*"). The landlord argues that the accommodation is a "vacation" rental and this exempt from the provisions of the *RTA* pursuant to s. 4(e) of the statute.

The issue is whether or not the *RTA* applies.

Background and Evidence

The rental unit is the three bedroom upper level of a home located in a resort municipality. There is a second rental accommodation in the home. The landlord lives in two bedroom suite on the ground floor.

Originally the tenants JA and SA, a couple, joined with four others (two other couples) to rent the premises for one year from October 1, 2019 to October 1, 2020. Since then two of the couples have left. DW and EM, the tenants at the September 16 hearing, began their rental on April 1, replacing a couple who were leaving at that time. They signed a written agreement entitled “Vacation Rental License” with the landlord for the remainder of the original one year term.

Under the terms of the agreements it appears that each couple rented a specific bedroom in the “upper guest rental unit” and share obligations regarding the entire “upper guest rental unit.” The tenants DW and EM together pay $1700.00 per month to the landlord.

The landlord testified on the first hearing day. DW and EM, who were not present on the first hearing day, had access to the materials filed by the tenants and testified on the second day and the landlord was afforded an opportunity to respond

Analysis

The contract in this case is entitled “Vacation Rental License” and it specifically states it is not a tenancy agreement. Normally, in the commercial world the written agreement between the parties would govern their relationship and they would be held to its terms.

However, the *RTA*, ss. 5(1) and 5(2) provide that one cannot contract out of the *RTA*. Any attempt to do so is of no effect. This means that simply stating in a contract that it is not a tenancy agreement or is not subject to the *RTA* is not definitive of the question of whether or not it is.

Leaving aside for the moment the particular words used in the written agreement, the facts show that the facility in question is clearly accommodation intended to be rented (or licensed out) to the tenants as a place to live. It is a rental unit as defined under the *RTA* The premises are a self-contained, three bedroom suite with kitchen and bathroom facilities. The tenants pay rent and utilities.

The landlord's central argument is that the premises, though having been let out as living accommodation, are being occupied as vacation accommodation. Such premises are specifically excluded from the *RTA* under s. 4(e).

He notes that the accommodation comes furnished with some very nice furniture, more conducive to vacation accommodation. Most rental units are offered unfurnished. The agreement contains terms restricting guests and visitors, a term not consistent with regular residential tenancy rentals.

There are significant facts pointing to this being a regular residential tenancy rental and not a typical vacation accommodation. It is a one year fixed term arrangement; a very long time for a vacation. The rent is due monthly and not daily or weekly. There is no indication the landlord charges GST as he would on short term lodging. The tenants must pay their own utility costs. They are responsible for snow clearing their area and clearing away overhanging snow and ice. They are obliged to clean the suite "to a professional standard" on move out. The agreement requires the tenant's to provide significant information about themselves but it does not ask for the address of their principal residences; residences one would expect them to be returning to after a vacation (though the landlord has information from foreigners' passports and/or visas).

The landlord submits that while the tenants may not be on typical vacations, they are on working vacations. They come to the resort community from afar to vacation and get jobs to help pay for their vacations.

He argues that the resort community has two major seasons, winter for skiing or snow activities and summer for mountain biking activity bracketed by two "shoulder" seasons. The different seasons command different rents. In the case of the original six tenants he says he smoothed out the high and low rates chargeable during each season to produce an equal rent for each of the twelve months of the original agreement.

He notes that the agreements require the tenants to produce their visas to show they won't have to leave during the term of the agreement.

The remaining applicants, DW and EM, who have their own agreement with the landlord are clearly not on working vacations. DW arrived here from the UK in August 2019 under a two year work visa. He works in the resort municipality and is applying for landed immigrant status, an action not consistent with a vacationer. EM is a Canadian. She says that this is her principal residence. Her current documentation uses this address for bills sent to her. Both tenants are under the belief that they will be signing another one year agreement with this landlord to replace the current agreement. Whether or not they do, it indicates that their intentions are for a long term stay, not a vacation.

The more apt perspective is that this couple have chosen to live and work in this area because it is amenable to their preferred recreational activities, like biking or skiing/boarding; like a boater wishing to live close to the water. They are not expecting to "move back" to anywhere. I find that in the case of DW and EM they are not on working vacations and the rental unit is not exempt as vacation accommodation.

It should be noted that at the first hearing the tenant JA argued that the property is not zoned for vacation rentals. Between hearings he was permitted to file material in support of that argument and the landlord was permitted to file responding material. Although the tenant did file material, he did not serve it on the landlord and so I have not considered it. At the second hearing the landlord admitted that he did not have a vacation rental license from the local government for this property. I do not give this information any weight in my decision as it is not clear whether his lack of such a license is because he would be refused one due to his property not being zoned for vacation rentals or whether he simply has not applied for such a license.

Conclusion

The tenants DW and EM are residential tenants and their tenancy is governed by the *RTA*. They are entitled to exclusive possession of their bedroom and have licence to use the common facilities of the upper guest unit and the common facilities provided for in the written agreement. The two month notice to end the tenancy cited in the application is not in accord with s. 52 of the *RTA* and is of no effect.

I

The application indicates the tenants seek a compliance order. It is more appropriate for me to note that vis a vis the tenants DW and EM, the landlord is obliged to comply with the terms of the *RTA* in matters such as security deposits, entry to the premises and rent increases.

There is no claim for recovery of any filing fee.

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 16, 2020

Residential Tenancy Branch