



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR / OPC, MNR, MNDC, OLC, RP, PSF, FF

Introduction

This hearing dealt with two applications: 1) from the tenant for a monetary order as compensation for damage or loss under the Act, orders instructing the landlord to comply with the Act, make repairs to the unit / site or property, provide services or facilities required by law, and recovery of the filing fee; 2) from the landlord for an order of possession, a monetary order for unpaid utilities, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony directly, and through their respective legal counsel.

Issues to be Decided

- Whether the landlord is entitled to an order of possession
- Whether the landlord is entitled to a monetary order under the Act, including recovery of the filing fee
- Whether the tenant is entitled to a monetary order under the Act, including recovery of the filing fee
- Whether the tenant is entitled to certain orders against the landlord

Background and Evidence

A hearing was previously held in a dispute between these same parties and a decision was issued on February 10, 2009. In that decision the dispute resolution officer determined that there is no written tenancy agreement for this month-to-month tenancy which commenced in October 2002. The tenant owns the manufactured home and

pays rent for the manufactured home site in the amount of \$250.00, which is due in advance on the first day of each month.

It is understood that in July 2008 the landlord verbally informed the tenant of her wish to end the tenancy, and that this was related to the landlord's intention to build on the site. Thereafter, however, the landlord issued a 1 month notice to end tenancy for cause dated October 31, 2008. The date shown on the notice by when the tenant must vacate the manufactured home site is December 31, 2008. Reasons identified on the notice for its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

put the landlord's property at significant risk

Tenant has assigned or sublet the rental unit / site without landlord's written consent.

Former counsel for the landlord faxed the notice to the tenant in care of the tenant's counsel. By letter to the landlord's former counsel dated November 4, 2008, the tenant's counsel confirmed receipt of the landlord's notice. Further, in her letter, the tenant's counsel stated, "I presume that your client will serve [the tenant] directly as is required." In her letter, the tenant's counsel also stated, in part, as follows:

There are a few problems with the Notice. First, [the tenant] does not occupy a "Rental Unit." She owns a mobile home that is located on a "Manufactured Home Site" owned by [the landlord]. The Notice there fore is invalid.

.....[the tenant] has not sublet the manufactured home site.

.....please advise as to how [the tenant] has "put the landlord's property at significant risk."

Needless to say, my client will not be vacating the site by December 31, 2008.

Subsequently, the landlord issued two further notices to end tenancy which were served in person on the tenant, as follows:

1 month notice to end tenancy for cause, dated May 21, 2009

The date shown on this notice by when the tenant must vacate the manufactured home site is June 21, 2009. Reasons shown on the notice for its issuance:

Tenant is repeatedly late paying rent

The other notice: 10 day notice to end tenancy for unpaid rent or utilities, dated May 21, 2009.

The date shown on this notice by when the tenant must vacate the manufactured home site is May 31, 2009. On this notice, utilities in the amount of \$540.00 are shown as outstanding.

By way of fax dated May 26, 2009, the landlord's counsel copied the tenant's counsel with an Affidavit of Service for the above two notices which were served on May 21, 2009.

In her application, the tenant has not applied to dispute any of the above three notices to end tenancy. Specifically, the tenant did not file to dispute either of the 1 month notices within 10 days of their respective receipt. Neither did the tenant file to dispute the 10 day notice within 5 days of its receipt.

Further to recovery of the \$100.00 filing fee, the tenant applies for a monetary order to recover certain other compensation. The essence of this compensation is associated with the alleged breach of the tenant's right to quiet enjoyment, which arises principally from the tenant's discovery on or about March 4, 2009 of the "Do Not Occupy" notice posted on her door by the local government authority.

Further to compensation, the tenant applies for orders to be issued against the landlord, in addition to the assessment of certain administrative penalties.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 1 month notice to end tenancy for cause dated October 31, 2008. On page 2 of the two page notice it is stated, in part, as follows:

You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. A Dispute Resolution Officer may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.

If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of this Notice (You can move out sooner.) If you do not file an Application, move or vacate, your landlord can apply for an Order of Possession that is enforceable through the Court

As to the relevant statutory provisions, section 40(4) & (5) of the Act provides:

40(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the manufactured home site by that date.

The tenant's application for dispute resolution was filed on May 1, 2009, and then re-faxed on May 4, 2009. In her application the tenant did not apply for more time to make an application to cancel the notice, or apply to cancel the notice.

Concerning statements in the letter from tenant's counsel dated November 4, 2008, which pertain to the form of the landlord's notice, once again I refer to page 2 of the two page notice where it is stated, in part, as follows:

An error in this Notice or an incorrect move-out date on this Notice does not make it invalid.

Following from this, I find that the landlord's "X" in the box on page 1 of the notice beside "Rental unit, *Residential Tenancy Act*" as opposed to beside "Manufactured home site, *Manufactured Home Park Tenancy Act*," does not render the notice invalid. Further, I find that it was clearly understood by both parties that the notice pertained to the tenant's manufactured home located on the landlord's manufactured home site at the subject address.

As to statements in counsel's letter which concern service of the notice, section 81 of the Act addresses **How to give or serve documents generally**. In particular, section 81(h) provides:

81 All documents, other than those referred to in section 82 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

Residential Tenancy Policy Guideline # 12 speaks to **Service Provisions** and provides, in part, that if transmission of a copy of the document by fax is used, "then the person serving the document will need to provide proof that the document transmitted by fax was sent to the fax number provided, and that the transmission of all pages was completed."

In summary, the landlord's counsel faxed the notice to the tenant in care of the tenant's counsel. Tenant's counsel confirmed receipt of the notice. Pursuant to section 83(b) of

the Act, the notice is deemed to be received “on the 3rd day after it is faxed.” Finally, the tenant’s counsel made no submissions before or during the hearing in relation to challenging service of the notice.

The landlord made application for dispute resolution on May 11, 2009. In her application the landlord applied for the matters set out in the introduction portion of this decision, which includes application for an order of possession. I find that the landlord is entitled to an order of possession arising from the undisputed 1 month notice to end tenancy dated October 31, 2008. The serving of two subsequent notices by the landlord does not operate as a waiver of the notice already given. In consideration of all the circumstances of the dispute which include, but are not limited to, some flexibility identified by the landlord during the hearing, the order of possession is effective October 31, 2009.

Related to the application for a monetary order for unpaid utilities, the landlord’s 10 day notice records that utilities in the amount of \$540.00 is owed. This amount is calculated on the basis of an alleged verbal agreement between the parties whereby the tenant agreed to pay the landlord \$90.00 per year for water for each of the 6 years from 2003 to 2009 (6 x \$90.00). The landlord claims this payment did not occur. In summary, I find there is insufficient evidence to support the landlord’s claim there was an agreement reached between the parties in this regard. In the result, I dismiss the landlord’s claim for a monetary order for unpaid utilities.

As for the various aspects of the tenant’s claim, my findings are set out below.

Copies of receipts were submitted into evidence in support of the claim for recovery of expenses incurred by the tenant while unable to reside in her manufactured home. These expenses include, but are not necessarily limited to, clothing, other personal items and dining out. On a balance of probabilities, I find there is insufficient evidence

that these expenses are extraordinary or that they arise as a direct result of the current dispute. Rather, they appear to form part of everyday cost of living expenses.

There is no evidence of other costs incurred by the tenant in association with this dispute. Further, as previously stated, I have found that the landlord is entitled to an order of possession pursuant to the 1 month notice dated October 31, 2008. In view of all of the foregoing, I dismiss this aspect of the tenant's claim which concerns compensation arising out of an alleged breach of the right to quiet enjoyment.

An order of possession has been issued in favour of the landlord. Accordingly, I find no basis upon which to issue orders against the landlord to make repairs to the unit / site or property, or provide services or facilities. In view of all the circumstances, neither do I find any basis upon which to assess administrative penalties against the landlord as urged in submissions by the tenant's counsel.

Finally, where it concerns the respective applications for recovery of the filing fee, as the landlord has succeeded in her application for an order of possession, I find that the landlord is entitled to recovery of the \$50.00 filing fee.

All aspects of the tenant's application, including recovery of the filing fee, are dismissed.

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **1:00 p.m., October 31, 2009**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby grant the landlord a monetary order under section 60 of the Act for **\$50.00**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is hereby dismissed.

DATE: July 23, 2009

Dispute Resolution Officer