

DECISION

Dispute Codes: CNLC, CNL, CNR, MNDC, OPT, FF

Introduction

This is the Tenants' application to cancel a Notice to End Tenancy for Landlords' Intention to Convert to Another Use; to cancel a Notice to End Tenancy for Landlords' Use; to cancel a Notice to End Tenancy for Unpaid Rent; for a monetary order of compensation for damage or loss; for an Order of Possession of the site; and to recover the cost of the filing fee from the Landlords.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Preliminary Matter

At the onset of the Hearing, it was established that the Landlord issued only one Notice to End Tenancy, and that it was issued under Section 40 of the Act (for cause). Therefore, the Tenants' applications to cancel the Notices to End Tenancy under Sections 39 (for unpaid rent) and 42 (Landlord's use of property) of the Act are dismissed.

Issues to be Decided

- Should the Notice to End Tenancy for Cause issued August 11, 2009, be cancelled?
- Is the Tenant entitled to a monetary order for compensation for damages, and if so, in what amount?
- Is the Tenant entitled to recover the cost of the filing fees from the Landlord?

Background and Evidence

Facts on which the parties agree:

- The rent for the site is \$300.00 per month.
- There is no written tenancy agreement.

- The Tenants purchased their mobile home approximately 4 years ago from the previous tenants.

RE: Application to cancel Notice to End Tenancy

The Landlord indicated the following causes to end the tenancy on the Notice to End Tenancy:

- Tenant is repeatedly late paying rent;
- Tenant has caused extraordinary damage to the unit/site or property/park; and
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.
- The Tenants paid rent in cash, and the Landlord did not issue receipts.

The Tenants testified that they always paid their rent on time, except when the Landlord was away. The Landlord also lives on the property, which is a parcel of land comprising a total of 160 acres. This parcel of land is comprised of approximately 38 acres on one side of a roadway, and the balance of the land is situated on the other side of the roadway. The Tenants stated that the Landlord was often absent, sometimes away for weeks on end. The Tenants testified that they had an arrangement with the Landlord that they could drop the rent off at the Landlord's home. The Tenants testified that there was never an issue before regarding late payment of rent, the Tenants did not receive any warning, nor did the Landlord tell them it was a problem.

The Landlord testified that the Tenants were always late paying the rent, sometimes one or two weeks late.

The Landlord testified that at the beginning of the tenancy, he had given the Tenants permission to keep one horse, a dog and a cat on the rental property, but the Tenants had up to seven or eight horses on the property. The Landlord stated that the Tenants' site was approximately $\frac{1}{4}$ to $\frac{1}{2}$ of an acre, and included a septic field. The Landlord testified that the Tenants allowed their horses to walk on the septic field, resulting in erosion and damage to the septic field. The Landlord stated that he first noticed the damage in 2008. The Landlord stated that had also received complaints from

neighbours about the horses running free and interfering with other horses. The Landlord testified that he had not given the Tenants any written notification to remove their horses from the site, but that he had given the Tenants verbal notice.

The Tenants testified that their horses had not damaged the septic field, and in any event, the septic field was in the same state as it was when they first moved on to the site approximately 4 ½ years ago.

The Landlord testified that in August, 2009, the Tenants had entered into an agreement to sell their manufactured home, and requested permission of the Landlord to assign the tenancy agreement to the new purchaser. The Landlord testified that he declined to give consent to the Tenants and that he told the Tenants the new purchaser would have to remove the trailer from the site. The Landlord testified that the Tenants gave the purchaser false information about the site by telling the purchaser that she would have first right of refusal if the property was to be subdivided; that the site was comprised of 40 acres; that the purchaser could keep multiple horses on the site; and that the site included outbuildings, which actually belonged to the Landlord.

The Landlord testified that in September, 2009, he had received a Notice from the Regional District advising him that he was in contravention of a bylaw by having one principal dwelling, two manufactured homes, a cabin and a suite in the barn. The Notice directed the Landlord to contact the Bylaw/Compliance Officer within 15 days to resolve the infraction and remedy the situation. The Landlord testified that the Regional District was waiting to hear the results of this hearing before issuing any formal order. The Landlord has advised all tenants of the contents of the Regional District's Notice.

RE: Application for Monetary Order for compensation for damages

The Tenants testified that they would not have purchased the manufactured home if they had known about the bylaw infringement and the septic field damage. The Tenants stated that the Landlord knew that he was in violation of the bylaws at the time he rented the site to the Tenants. The Tenants applied for damages in the amount of \$21,600.00, calculated as follows:

$$\$300.00 \text{ (site rental)} \times 12 \text{ (months)} \times 6 = \$21,600.00$$

When questioned, the Tenants could not identify a reason for the multiplier of 6.

The Landlord testified that his position is that the Tenants damaged the septic field. Furthermore, the Landlord stated that he did not know about the bylaw infraction until he received the Notice from the Regional District.

Analysis

RE: Application to cancel Notice to End Tenancy

The Landlord claims that the Tenants were repeatedly late in paying their rent, and had been constantly late since the tenancy began. This is a tenancy of more than 4 years. I find that the Landlord, in accepting late rent payments for such an extended period of time, implicitly consented to the Tenants paying their rent late. The Tenants are warned that the Landlord now expects the Tenants to pay the rent on the first day of the month. The Landlord is warned that he must provide receipts for rent paid in cash, pursuant to Section 20(2) of the Act.

The Tenants have had horses on the rental site since they first moved in. The Landlord, by his own admission, has not provided the Tenants with any written notice to remove the horses from the site. The Landlord did not submit any documentary evidence to support his allegation that the septic field was damaged, or that if there was damage, the damage was caused by the Tenants' horses.

The Tenants sought to assign their tenancy agreement to a new tenant and the Landlord declined to give his consent. Therefore the Landlord has not been affected by any false information the Tenants may have given a potential purchaser of their mobile home.

The Notice to End Tenancy for Cause issued August 11, 2009, is cancelled. The Tenancy remains in full force and effect.

RE: Application for Monetary Order for compensation for damages

The issue to be determined based on the testimony and the evidence is whether the Tenants are entitled to monetary compensation under section 60 of the Act for damages or loss. This determination is dependant upon answers to the following questions:

- Have the Tenants submitted proof that the specific amounts being claimed are validly owed by the Landlord to these Tenants?
- Have the Tenants submitted proof that the claim for compensation for damage or loss is supported pursuant to section 7 and section 60 of the Act by establishing on a balance of probabilities that the damage was caused by the Landlord.

The burden of proof regarding the above is on the Tenants/Applicants.

The Tenants could not advise how they arrived at their monetary claim. The Landlord testified that he was unaware that he was in violation of the bylaws until he received the notification from the Regional District in September, 2009. The Landlord testified that he was unaware of the damage to the septic field until 2008, and that he believed the Tenants' horses were responsible for damaging the septic field. The Landlord did not prove that there was any damage to the septic field. The Tenants provided documentary evidence to suggest that they themselves may have alerted the Bylaw Officer to the bylaw infraction in August of 2009.

Based on the documentary evidence and verbal testimony of both parties, I find that the Tenants have not proven their claim for damages and I dismiss this portion of the Tenants' application.

The Tenants have not been successful in their claim and are not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Notice to End Tenancy for Cause, issued August 11, 2009, is cancelled. The tenancy remains in full force and effect.

The remainder of the Tenants' application is dismissed in its entirety, without leave to reapply.

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: October 16, 2009.
