

Decision

Dispute Codes: CNC, FF

Introduction

This hearing dealt with an application from the tenant for cancellation of the landlord's 1 month notice to end tenancy for cause, and recovery of the filing fee. The landlord seeks an order of possession in the event that the tenant's application fails. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to cancellation of the notice to end tenancy and recovery of the filing fee
- Whether the landlord is entitled to an order of possession

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on July 1, 2005. Monthly rent of the manufactured home site is presently \$661.00, and is payable on the first day of the month.

The landlord issued a 1 month notice to end tenancy for cause dated September 25, 2009. A copy of the notice was submitted into evidence. Reasons shown on the notice for its issuance are as follows:

Tenant has allowed an unreasonable number of occupants in the site

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

significantly interfered with or unreasonably disturbed another occupant or the landlord

seriously jeopardized the health or safety or lawful right of another occupant or the landlord

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Subsequently, the tenant applied to dispute the notice by filing for dispute resolution on September 28, 2009.

In his documentary submission, the landlord describes the mobile home park as a “55+ community specializing in retirement for home owners to relax in a beautiful & peaceful atmosphere.” The tenancy agreement provides that “rent includes **only a maximum of 2 persons occupying this Site.**” While the tenant and her daughter, “AJD” are both shown as tenants on the written agreement, “AJD” does not reside in the mobile home. Currently residing with the tenant are two sons, “AJH” and “AH.” The landlord states that on April 15, 2007, “AJD” submitted an application to be an occupant, although it was not complete, while no application to be an occupant has been submitted by “AH.”

Events giving rise to the landlord’s issuance of the notice to end tenancy arise mainly from complaints by other residents in the manufactured home park about noise and occasionally excessive speed. The sources of the noise have been identified as the operation of the motorcycle owned by “AJD,” and the operation of the truck owned by “AH,” as well as loud music coming from the manufactured home itself. In addition to complaints from other residents, the landlord has been contacted by a local government by-law enforcement officer who claimed to have received complaint(s) about noise arising from the operation of the above vehicles.

The landlord’s submission documents that noise complaints began in May and continued through June, July, August and September 2009. While the tenant explained that one particular neighbour is responsible for the complaints, the evidence shows that complaints have been made by several neighbours.

Efforts to resolve the matter have been undertaken by the parties by way of a combination of conversations, meetings and agreements. However, any resolution appears to have been short term, and the landlord expressed concern about balancing the rights of the tenant with the rights of the other residents to quiet enjoyment.

Written notifications of the landlord's concerns have been provided to the tenant by way of letter from the landlord dated August 6, 2009 ("warning of noise violation and other terms of tenancy"), letter from the landlord dated September 10, 2009 ("final warning: noise violation breach of a material term"), letter dated September 15, 2009 (re-issue of previous letter dated September 10, 2009 and addressed to both tenants named on the tenancy agreement), and letter from the by-law enforcement officer dated September 16, 2009. Ultimately, the landlord's notice to end tenancy was issued on September 25, 2009, and thereafter it was followed by a further letter to the tenant dated September 29, 2009 from the landlord in which he addresses "speeding with intent to disrupt" in relation to the operation of the motorcycle.

Analysis

Section 40 of the Act speaks to **Landlord's notice: cause**. 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 September 25, 2009. Pursuant to the legislative provisions, the tenant disputed the notice by filing an application for dispute resolution within 10 days of receiving the notice.

Section 22 of the Act addresses **Protection of tenant's right to quiet enjoyment**. Further, Residential Tenancy Policy Guideline # 6 speaks to **Right to Quiet Enjoyment** and provides in part, as follows:

This guideline deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment "promis(es) that the tenant....shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the

landlord – tenant relationship, the covenant of quiet enjoyment protects the tenant’s right to freedom from serious interferences with her or her tenancy.”

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

The full text of the legislation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

As the tenant takes the position that the noise complaints arise principally from one particular neighbour who she considers is bothersome, she appears to conclude that none of the complaints have any merit. However, as noted earlier, the complaints arise from several neighbours and span a period of several months.

After carefully reviewing the documentary evidence and testimony of the parties, I find that the landlord has established on a balance of probabilities that he has cause to end the tenancy pursuant to section 40 of the Act. In particular, section 40(1)(c)(i)&(ii) of the Act provides as follows:

40(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(c) the tenant or a person permitted in the manufactured home park by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park,

(ii) seriously jeopardized the health, safety or a lawful right or interest of the landlord or another occupant,

Accordingly, following from all of the above, I find that the landlord is entitled to an order of possession to be effective not later than March 31, 2010.

Conclusion

Pursuant to all of the above, I hereby dismiss the tenant's application to cancel the landlord's 1 month notice to end tenancy for cause, and to recover the filing fee.

I hereby issue an order of possession in favour of the landlord effective not later than **1:00 p.m., March 31, 2010**. 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.

DATE: November 16, 2009

Dispute Resolution Officer