Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OLC, PSF, CNL, MNDC, FF

Introduction

This matter dealt with an application by the Tenants for an Order that the Landlords comply with the Act and provide services and facilities required by law and to recover the filing fee for this proceeding. The Tenants amended their application to cancel a Notice to End Tenancy for Conversion of Manufactured Home Park and further amended their application to include a monetary claim for compensation.

At the beginning of the hearing, the Tenants objected to the Landlords relying on 4 pieces of legislation as they claimed they had only been served with them the day prior to the hearing. I find that the legislation in question is not evidence and therefore not subject to the rules for the service of evidence set out in the Residential Tenancy Branch Rules of Procedure. I do find however, that a map showing an Agricultural Land Reserve region provided by the Landlords is evidence which *was not* served in accordance with the Rules of Procedure and as the Tenants have not had an opportunity to respond to it, it is excluded from evidence.

The Tenants provided a copy of a written authorization from the owners of the manufactured home who agreed that one of the Tenants could act on their behalf in these proceedings. At the beginning of the hearing, the Tenants were ordered to provide a copy of their application and all evidence to the owners of the manufactured home prior to the next hearing date (if applicable).

Issues(s) to be Decided

1. Is there jurisdiction to hear the Tenants' application?
2. Are the Landlords entitled to end the tenancy?
3. Are the Landlords required to provide facilities to the manufactured home site?
4. Are the Tenants entitled to compensation?

Background and Evidence

The Landlords are the present owners of the property on which the manufactured home site in question is situate. The property was previously owned by the mother of one of the Landlords (J.H.) who transferred it to her son (J.H.) on or about November 1, 2009.

The manufactured home on the property is owned by the sister of one of the Landlords and her spouse who resided in it until 2007. It was vacant until approximately July 15, 2009 when the Tenants took possession of it.

The Landlords claimed that in July 2009, the Tenants advised their brother-in-law (who was acting on behalf of the former owner), that they had purchased the manufactured home on the property from the owner's daughter. The Landlords further claimed that the previous owner felt sorry for the Tenants so she told them they did not have to move the trailer from the property right away but could keep it there if they paid her $200.00 per month. The Landlords said that the former owner refused to enter into a written tenancy agreement with the Tenants and made it clear to them that she was transferring the property to her son in November of 2009, that they could only stay there temporarily and that they would have to make an agreement with her son if they were to continue to stay there after November 2009.

The Landlords deny that there was ever an agreement to provide the Tenants with water or to be responsible for maintaining the septic tank. The Landlords claimed that when they took possession of the property in November 2009, they made it clear to the Tenants that they did not want to rent a pad site on the property to the Tenants and refused to accept rent from them. On January 4, 2010, the Landlords served the Tenants with a 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park.

The Landlords claimed that the property is in the Agricultural Land Reserve. The Landlords said that some time after they served the 12 Month Notice, they discovered that s. 3(b) of the Regulations to the Agricultural Land Commission Act permit only an "immediate member of the property owner's family" to reside in a manufactured home on the property. The Landlords also argued that the Residential Tenancy Branch lacks jurisdiction in this matter because the Agricultural Land Commission Act takes precedence over the Manufactured Home Park Tenancy Act.

The Tenants claimed that they had an agreement with the previous owner to rent the pad site as well as another part of the rental property where they store a number of uninsured and insured vehicles. The Tenants also claimed that their rent included the use of a shop and access to other areas of the property. The Tenants argued that they paid the former owner $200.00 per month from July 2009 to November 2009 and the present owners $200.00 per month for December 2009 and January and February 2010.

The Tenants said that they had a verbal agreement with the previous owner of the property that they could reside on the property for an indefinite term. The Tenants also said that they were told by the agent acting for the previous owner that the

manufactured home site had water and a functioning septic tank. The Tenants argued that the new owners were required to abide by this agreement. The Tenants said that on January 15, 2010, the Landlords cut off their water supply and advised them that they would not be responsible for maintaining the septic tank.

Analysis

RTB Policy Guideline #9 at p.1 states "if there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise. The Guideline then sets out some factors that may weigh against there being a tenancy such as

- where the property is not located in a manufactured home park
- where the property on which the manufactured home is located does not meet zoning requirements for a manufactured home park
- where there is no access to services and facilities usually provided in ordinary tenancies.

In this case, I find that it was the intention of the previous owner and the Tenants to create a tenancy. The previous owner and her agent allowed the Tenants the exclusive use one of 3 existing manufactured home sites on the property that was serviced with water and a septic tank for $200.00 per month. The Tenants also argued that the agreement included the use of other areas of the property to store a number of uninsured vehicles, however, I find that there is insufficient evidence to draw that conclusion and as it is unnecessary to my decision, I decline to make any findings in that regard. I do not find the fact that the manufactured home site was not in a park to be sufficient to rebut the presumption that a tenancy was created. Consequently, I find on a balance of probabilities that there was a tenancy.

The Landlords argued that if there was a tenancy, it was for a fixed term and should have ended if the new owners did not want to enter into a new agreement with the Tenants. However, unless a tenancy agreement contains a term that a Tenant must move out at the end of a fixed term, the tenancy is deemed to continue on a month to month basis following the expiry of the fixed term. In any event, I find that there is no evidence that the tenancy was supposed to end when the property was transferred to the new owners. The Landlords' evidence was that it was up to the new owners if they wanted to continue the tenancy or not. In such circumstances, the usual practice is for the previous owner to serve the Tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property indicating that their tenancy was ending because the property was being sold and the new owners intended to use the property for their own use. This however, was not done and as a result, there is a presumption that the

tenancy continued on a month to month basis under the same terms when the property was transferred to the new owners.

The Landlords also argued that the Tenants misled the previous owner and her agent by telling them that they purchased the manufactured home from the owner's daughter when that was not the case. At common law, a material misrepresentation that induces one party to enter an agreement may be grounds to set aside that agreement, however, that argument was not advanced on behalf of the Landlords and I find that there is no evidence that the previous owner would not have entered into a tenancy agreement with the Tenants had she known that they had not purchased the manufactured home from her daughter.

The Landlords further argued that the property on which the manufactured home was situated was in the Agricultural Land Reserve (ALR) and that as a result, only immediate family members of the Landlords were permitted to occupy the manufactured home. They also argued that the Agricultural Land Commission Act prevented the director from making orders inconsistent with that Act. While there is no evidence to corroborate the Landlords' claim that the property lies within the ALR, I find that this is not significant to my decision in any event. In particular, section 40(j) of the Manufactured Home Park Tenancy Act states that a Landlord has grounds to end a tenancy if it is necessary because the Landlord must comply with an ***Order*** from a federal, provincial, regional or municipal authority (because the property is being used for a purpose contrary to a by-law for example). Consequently, I find that it is not inconsistent with the Agricultural Land Commission Act to find that there is a tenancy agreement even if it is non-compliant with that Act because the Manufactured Home Park Tenancy Act has provision for ending those types of tenancies.

As a result of the foregoing, I find that there is jurisdiction to hear the Tenants' application in this matter. However, RTB Rule of Procedure 2.3 states that "if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply."

The Tenants amended their application on February 5, 2010 to include a monetary claim for compensation for approximately $3,000.00 and served the amended application on the Landlords on February 9, 2010. In the circumstances, I find that the Landlords have had insufficient time to respond to this part of the Tenants' application and I further find that portions of that claim are unrelated to their application to cancel a Notice to End Tenancy and for the Landlord to provide services and facilities because it includes claims for such things as "pain and suffering." Consequently this part of the Tenants' application is dismissed with leave to reapply.

Conclusion

I find that there is jurisdiction to hear the Tenants' application. Consequently, the Tenants' application to Cancel the 12 Month Notice to End Tenancy dated January 4, 2010 and for an Order that the Landlords provide services and facilities is re-convened to **April 7, 2010 at 9:00 a.m.** for hearing. The Tenants' application for a monetary order for compensation is dismissed with leave to reapply.

I order that there be no additional amendments made to the Tenants' application and no new applications from either Party may be joined with the application in this matter. I further order that no new evidence may be filed by either Party prior to the next hearing date.

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: February 17, 2010.

Dispute Resolution Officer