



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, CNL, AS, FF

Introduction

This Hearing was scheduled to hear the Tenant's application to cancel a Notice to End Tenancy for Cause; to cancel a Notice to End Tenancy for Landlord's Use; for an order allowing the Tenant to assign or sublet because the Landlord's permission has been unreasonably withheld; and to recover the cost of the filing fee from the Landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues to be Decided

- Does the *Manufactured Home Park Tenancy Act* (the "Act") have jurisdiction over this matter?
- Should the Notices to End Tenancy be cancelled?
- Is the Tenant entitled to an Order that he be allowed to sublet the site?

Background and Evidence

The manufactured home is situated on a rural lot. The manufactured home is owned by the Tenant. The Landlord owns the land. The Landlord entered into an agreement with the previous tenant on May 1, 1993. The Landlord testified that he did not give his permission for the current Tenant to purchase the manufactured home from the previous tenant and leave it on the site. The Tenant is renting out the manufactured home, and pays rent to the Landlord directly. The Landlord testified that he couldn't

remember exactly when he discovered that the Tenant had purchased the manufactured home, but that is was "a long time ago".

The Tenant testified that he talked to the Landlord right after he purchased the manufactured home and that the Landlord provided him with his banking information. The Tenant testified that he has been paying rent to the Landlord by direct deposit since he purchased the manufactured home. Monthly rent is currently \$300.00 per month. There is no written tenancy agreement between the parties.

The Landlord testified that he served the Tenant with a Notice to End Tenancy for Cause on October 18, 2010, by handing the document to the Tenant. The Tenant did not dispute this.

The Landlord did not issue a Notice to End Tenancy for Landlord's Use.

The Landlord disclosed the following reasons for ending the tenancy on the Notice to End Tenancy for Cause:

- The Tenant is repeatedly late paying rent.
- The Tenant has allowed an unreasonable number of occupants in the site.
- The Tenant has assigned or sublet the rental site without the Landlord's written consent.

The Landlord provided an accounting of the number of times since December, 2006, that the Tenant has been late paying rent. The number totals 34 times in that period of time. For 2010, the tenant was late paying rent in January, February, March, April, May, June, July, August and September. The Landlord issued Notices to End Tenancy for Unpaid Rent on July 12, 2010 and August 18, 2010. Both times, the Tenant paid the overdue rent within the 5 days allowed by the Act.

The Tenant agreed that he was late paying rent, as disclosed by the Landlord, but stated that the Landlord had never complained until recently about late rent. The Tenant testified that the manufactured home was old (circa 1964) and could not be moved.

The Landlord asked for an Order of Possession effective March 31, 2011.

Analysis

The Act defines a manufactured home park as follows:

"manufactured home park" means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located;

A manufactured home site is defined as follows:

"manufactured home site" means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home;

By definition, I find that the manufactured home is situated on a manufactured home site in a manufactured home park and that the Act has jurisdiction over this matter.

The Act defines a tenancy agreement as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities;

I find that the parties have an oral tenancy agreement. The Tenant has been paying rent directly to the Landlord, by depositing rent payments into the Landlord's bank account.

The Tenant testified that his late payments have not been a problem until recently. However, he did not dispute that the Landlord issued a Notice to End Tenancy for Unpaid rent in July, 2010 and again in August, 2010. Despite being served with two Notices to End Tenancy, the Tenant was late again paying rent in September, 2010.

Therefore, I find that the Landlord has shown sufficient cause to end the tenancy due to the Tenant's chronic late payments of rent. The Tenant did not rectify the problem even

though he had been served with two Notices to End Tenancy. The Tenant's application to cancel the Notice to End Tenancy for Cause is dismissed.

I dismiss all the other aspects of the Tenant's application as they are no longer necessary or have no remedy since the Tenant application to cancel the Notice to End Tenancy has been dismissed.

The Landlord requested an Order of Possession for March 31, 2011.

Section 48(1) of the Act states:

Order of possession for the landlord

48 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the manufactured home site to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

Further to the provisions of Section 48(1) of the Act, I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., March 31, 2011.**

Conclusion

The Tenant's application is dismissed in its entirety.

I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., March 31, 2011.** This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: November 23, 2010.
