



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, LRE, FF

Introduction

This series of hearings dealt with two Applications for Dispute Resolution, one each filed by the Tenants. The Tenants are seeking monetary compensation under the Act or tenancy agreement, orders for the Landlord to comply with the Act or tenancy agreement, an order to suspend or set conditions on the Landlords' right to enter onto the rental site, and to recover the filing fee for the Applications.

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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that these parties have been involved in three prior Dispute Resolution hearings and two Reviews. Where necessary, these matters are described below.

At the outset of the hearing on November 25, the Tenants argued that one of the Landlords should not be participating in the hearing as he is subject to a Recognizance after Allegation to have no contact with the Tenants.

In evidence the parties had submitted different Recognizances, the first of which allows contact, "... as may be necessary for a hearing under the Residential Tenancy Act."

The Tenants argue this is the first Recognizance and that a second Recognizance had been issued after the first. The Tenants argue the second Recognizance orders the male Landlord to have no direct or indirect contact with them, and there is no stipulation the male Landlord could participate in a Residential Tenancy Act matter in the second Recognizance.

Having weighed the evidence and taken into account such factors as the Tenants naming this male Landlord in one of their Applications, and in the interest of natural justice that both parties should be heard, and that in the interest of natural justice that this matter should not be delayed any further, I allowed the male Landlord to testify in this hearing.

Lastly I note that the Tenants have vacated the property and therefore, it was not necessary to deal with the issue of suspending or setting conditions on the Landlords' right to enter onto the rental site or for orders for the Landlords to comply with the Act or tenancy agreement.

Issues(s) to be Decided

Are the Tenants entitled to the monetary orders sought?

Background and Evidence

This tenancy began on October 1, 2008, with the parties entering into a handwritten, term lease. The written terms of the lease are:

“I [male Landlord] on behalf of myself and my mother [female Landlord] agree to lease the land Lot # [DL ****] Fire # [civic address] to [Tenant A] for 2 ½ years, for \$150 per month – 1 year then \$200 2 year If the property sells in this time we agree to a period of no more than six (6) month to move or sell the trailer #[MW****] on agreement with new owners.” (the “lease”)

[Reproduced as written, although identifying information has been eliminated.]

At the time of entering into this lease, the male Landlord had been living on the property, however, his residence had burned down and the male Landlord was travelling to another province to visit the female Landlord, who is his mother. He returned later and began living in a wooden structure on the property. The testimony of the male Landlord was that he always intended to continue living on the property.

The testimony of Tenant A was that he believed that he would have the land under the lease entirely to himself and did not expect the male Landlord would be living on the property.

The parties also dispute the configuration of the land under the lease. The Tenants argue that the property was made up of one piece of land and that the lease covered the entire property, therefore the male Landlord should not have been living on the

property. The Landlords argue that the property was made up of two different parcels or lots and that the lease was for the Tenants to live on one lot while the male Landlord was to live on the other lot.

Six days following the execution of the lease, on October 6, 2008, the male Landlord transferred ownership of the manufactured home to Tenant B, who is the sister of Tenant A, by written bill of sale.

Tenant A testified that after he got the land leased, Tenant B purchased the trailer from the male Landlord and he (Tenant A) occupied the manufactured home. Tenant B testified that Tenant A was her Agent in signing the lease. In one of the earlier Decisions, dated March 23, 2010, the Dispute Resolution Officer found that, "... as a result of that purchase the parties to the tenancy agreement [aka the lease] between the occupant of the manufactured home and the owner of the manufactured home changed effective the date of the transfer of ownership."

Tenant A testified that in about May of 2009, when the male Landlord moved back onto the property, problems arose which quickly escalated. Tenant A testified that the male Landlord made a lot of noise along with his friend, a third party. Tenant A also alleges that the male Landlord and or his third party friend then began a course of actions which intimidated and harassed him, from throwing rocks at the trailer Tenant A occupied, to destroying a tent or tarp owned by Tenant A, to intentionally digging up the water lines which went to the trailer. These problems escalated and were ongoing, and police intervention was required on more than one occasion.

I note that Tenant B was compensated in an earlier hearing, dated May 14, 2010, for the repairs to the water line and for a security deposit. In addition, this same Decision held that, "... the Landlord [the female Landlord in this case], is still obligated to pay the tenant [Tenant B in this case] compensation, on or before the effective date of the Notice to End, an amount equal to 12 months rent payable under the tenancy agreement." As Tenant B had applied for this compensation prior to the effective date of the end of tenancy, this claim was dismissed with leave to reapply.

The male Landlord testified that the problems started when Tenant A allegedly spread rumours in the community regarding the male Landlord's behaviour on the property in front of Tenant A's young daughter. The male Landlord also testified he had reported Tenant A to a ministry of the government due to forms Tenant A completed indicating the monthly rent on the property was \$550.00.

Throughout these proceedings, the Landlords continually argued the right of the male Landlord to live on the property, and provided evidence and testimony the male Landlord was on a separate lot from the one leased to the Tenants.

After several proceedings, the parties came to a mutual agreement to end the tenancy on May 31, 2010, as recorded in a decision from an earlier hearing, dated November 3, 2009. An order of possession was granted to be effective May 31, 2010. In the hearing of November 3, 2009, both parties had also agreed to work together in good faith to resolve any disputes that may arise.

In a Decision dated May 14, 2010 (the result of the hearing of May 10, 2010), the Dispute Resolution Officer recorded that, "... the landlord agreed to inform certain individuals to cease or refrain from disturbing the tenant and/or occupant of the mobile home for the duration of the tenancy."

The Tenants moved the manufactured home off of the property on May 21, 2010.

The Tenants and the male Landlord, along with the male Landlord's third party friend had an altercation during the move, and the Tenants allege that the male Landlord assaulted them. Tenant B claims that she had to be taken to hospital by an ambulance, as a result of being attacked by the male Landlord and his friend. According to the evidence, charges were laid against the male Landlord and his friend, although both parties had conflicting evidence regarding the disposition of those charges.

The male Landlord testified that he used bear spray to break up the altercation between the Tenants and his friend, although he was inside calling the police at the time this incident started.

Tenant A claims against the Landlords for the following:

- a. \$200.00 per month for 17 months (\$3,400.00) for rent from the male Landlord living on the leased property;
- b. \$200.00 per month for 17 months (\$3,400.00) for rent from the third party friend of the male Landlord living on the leased property;
- c. \$200.00 per month for 17 months (\$3,400.00) for return of the rent paid by Tenant A for the rent of the property;
- d. \$400.00 per month for 17 months (\$6,800.00) for rent from the female Landlord for allowing the male Landlord and his third party friend living on the property; and

- e. \$13,095.74 for compensation for ongoing stress and the hardship this had on the Tenant's disabilities, being forced to take extra medications, loss of quiet enjoyment, freedom from unreasonable disturbances and loss of exclusive possession of the property.

I note that Tenant A's claims exceed the \$25,000.00 limit on claims under the Act.

Tenant B claims against the Landlords for the following:

- a. \$2,400.00 for compensation under section 44 of the Act and as was determined in an earlier hearing (as described above);
- b. \$12,200.00 for six times the rent payable under section 44(2) of the Act;
- c. \$2,300.00 for the replacement of a broken camera;
- d. \$500.00 for ambulance fees and payment for the return ride to the property after assault by the male Landlord and his third party friend;
- e. \$1,500.00 for extra payment of moving the manufactured home as the male Landlord blocked the road;
- f. \$7,600.00 for rent from the male Landlord and his third party friend as they were on the property and the female Landlord would not remove them;
- g. \$800.00 for lost wages and travel; and
- h. \$100.00 for the filing fee for the Application.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, these are my findings:

I find that at the outset, it is necessary to clarify the legal relationships amongst the parties in this matter.

At the beginning of the tenancy relationships here, Tenant A had no legal ownership interest in the manufactured home. He personally signed the lease with the male Landlord and the evidence of the Tenants was that he signed this as an Agent for Tenant B. Once Tenant B purchased the manufactured home, the lease was assigned to her by operation of the common law, as the lease went with the manufactured home. As the manufactured home was being sold by the owners of the property, I also find there was an implied assignment of the lease to Tenant B.

Once the sale transaction was complete, by operation of the law and the Act, Tenant B became the landlord of Tenant A under the *Residential Tenancy Act*, and Tenant A no

longer had any right in the lease to the Landlords. This conclusion is further supported in the earlier Decision dated March 23, 2010, where the Dispute Resolution Officer found that,

“... as a result of that purchase the parties to the tenancy agreement [the lease] between the occupant of the manufactured home and the owner of the manufactured home changed effective the date of the transfer of ownership.”

I am also bound by this earlier Decision, under the legal principle of *res judicata*.

While at the very most Tenant A *might* have had a Residential Tenancy Act relationship with the Landlords for those six days, his claim was not relevant to that short time frame. His claim is framed around events that occurred some six months later, when the male Landlord returned to live on the property. Therefore, I find that Tenant A has no rights under either Act to claim against these Landlords and **I dismiss his claim entirely, without leave to reapply.**

As to my other determinations, I find the Landlords have breached several portions of the Act. When they went into the business of renting they became subject to the rental laws of British Columbia, and therefore had a duty to abide by these laws.

As to the breaches by the Landlords, section 60 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the Landlords failed to prepare a tenancy agreement which complied with the Act, in breach of section 13. What was prepared was a haphazardly drafted lease, which contained terms which led the Tenants to believe they were leasing the exclusive possession of the land due to the wording of the lease. This poorly drafted lease was entirely the fault of the Landlords.

In the normal course of rentals under the Act, when a person rents a site in a manufactured home park, they are provided with an area of property defined as a “site” under the Act, which is to be occupied by a manufactured home. The renter is also provided with access to the common areas of the park under the definition of “manufactured home park” and through operation of section 22 of the Act.

Due to the conflicting evidence here, I am unable to determine if the property was made up of one or two lots. Regardless of this, it is clear that the Tenants believed they had exclusive possession of the entire property through the wording of the lease and use of the word "land" in it. Furthermore, the Landlords did nothing to draw boundaries, or mark the bounds of the site for the manufactured home, nor did the Landlords indicate to the Tenants where the common property was.

I also find there is insufficient evidence from the Landlords to show they made it clear to the Tenants that one of the Landlords, or an Agent for the Landlord, or anyone else would be occupying the property during the term of the lease. Therefore, I find that Tenant B was entitled under the lease to use of all the land at the site.

I find that the actions of the male Landlord, such as throwing rocks at the manufactured home, digging up water lines to the home, and ultimately pepper spraying Tenant B, constitute a breach of section 22 of the Act. This last act by the male Landlord was particularly egregious, as he did not even have to be present at the site on the day the manufactured home was being moved. Furthermore, the female Landlord had made assurances that she would, "... inform certain individuals to cease or refrain from disturbing the tenant and/or occupant of the mobile home for the duration of the tenancy."

As a result of the Landlords not complying with the Act as described above, I find that Tenant B, the owner of the manufactured home and who was assigned the lease as described above, was continually and intentionally deprived of her rights under section 22 of the Act to have quiet enjoyment and exclusive possession of the manufactured home site and use of the common areas free from significant interference. Therefore, I order the Landlords to pay Tenant B the sum of **\$3,400.00**, which is equivalent to 17 months of rent at \$200.00 per month.

I further order the Landlords to pay Tenant B the sum of **\$2,400.00** for compensation under section 44 of the Act, as described above.

As to the remainder of Tenant B's claims, I note that when making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim.

Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In this case I find that Tenant B failed to provide sufficient evidence that the Landlords were using the property for something else, or had failed to take steps for the stated purpose, as required under section 44(2) and therefore I dismiss the claim for six times the rent payable under section 44(2) of the Act.

I find that Tenant B had insufficient evidence to prove one of the Landlords had damaged her camera, as on the evidence here it appears the camera was damaged due to an altercation involving the third party friend of the male Landlord. Therefore, I dismiss the claim for \$2,300.00 for the replacement of a camera.

I find that Tenant B had insufficient evidence, such as receipts or invoices, to verify her actual costs of the ambulance trip and any payments she made for the return ride to the property, and I dismiss this claim.

I find that Tenant B had insufficient evidence to prove or verify she was required to pay an additional \$1,500.00 for moving the manufactured home, as the invoice submitted for this does not include any mention of extra charges or expenses incurred. Tenant B also did not provide any receipts or invoices to prove she lost \$800.00 in wages and travel. Therefore, both these claims are dismissed.

Finally, as Tenant B has already been compensated for the Landlords' breaches under section 22 of the Act, I dismiss her claim for rent from the male Landlord and his third party friend while they were on the property. There was also insufficient evidence from Tenant B that there was any tenancy relationship established between herself and the male Landlord or his friend.

As Tenant B has been partially successful in her claim, I also award her \$50.00 towards the filing fee for the Application.

Therefore, I find that Tenant B has established a total monetary claim of **\$5,850.00** against the Landlords, comprised of the above described awards and the \$50.00 fee contribution for this application.

I grant Tenant B an order under section 60 for the balance due of **\$5,850.00**. This order may be filed in the Provincial Court (Small Claims) 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 of the Act.

Dated: December 2, 2010.

Dispute Resolution Officer