

DECISION

Dispute Codes: OPC, FF / CNC, FF

Introduction

In summary, this review hearing arises out of what were originally 2 applications: i) by the landlord for an order of possession / and recovery of the filing fee; ii) by the tenants for cancellation of a notice to end tenancy / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

This review hearing was scheduled following an application by the tenants for review of a decision dated November 2, 2011, and a decision and order dated November 22, 2011. In the Review Decision dated December 2, 2011, the dispute resolution officer sets out the complex circumstances giving rise to the application for review. Those circumstances will not be described again in detail here. In short, the landlord seeks an order of possession pursuant to issuance of a 1 month notice to end tenancy for cause, and the tenants seek to have the notice set aside. Further details which are relevant to the dispute are set out below.

The manufactured home is owned by tenant "AV's" parents, who purchased it from landlord "PS" in November 2010. There is no written residential tenancy agreement in place for the tenancy which began on or about December 15, 2010. The tenants pay monthly pad rent of \$325.00 directly to landlord "PS."

Separate and distinct from the oral tenancy agreement between the tenants and landlord "PS," the tenants testified that they have an agreement with tenant "AV's" parents, pursuant to which they are purchasing the manufactured home.

The landlord issued a 1 month notice to end tenancy for cause dated September 27, 2011. The notice was personally served on the tenants on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the manufactured home is October 31, 2011, and reasons shown on the notice for its issuance are as follows:

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

significantly interfered with or unreasonably disturbed another person or the landlord

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

put the landlord's property at significant risk

As described in the Review Decision of December 2, 2011, the tenants commenced proceedings to dispute the landlord's notice when they attended the government agent's office on October 6, 2011.

Documentary evidence in support of the issuance of the notice is comprised largely of a petition dated September 21, 2011 which was signed by a number of other residents in the manufactured home park. In the petition, other residents claim that the tenants have breached their right to quiet enjoyment. Allegations set out in the petition include, but are not limited to, the following:

- verbally abusive diatribes
- tying their dog to a tree on a short leash causing it to bark constantly throughout the day
- building and stocking a chicken coop immediately adjacent to the common driveway despite the reasonable objections of other tenants that the noise is disruptive and the chickens represent a health hazard to some other tenants who have compromised immune systems
- refusing to allow the chicken coop to be moved to an alternate corner of their property
- bringing in a rooster that crows throughout the day and evening between 6:30 a.m. and midnight
- usurping the majority of the common areas of the park to the detriment of other tenants
- generally being as disruptive as possible towards other tenants of the park

Cautions and expressions of concern related to some of the above allegations have generally been given orally to the tenants. The landlord claims that other residents have indicated that they are prepared to vacate the manufactured home park should the subject tenants be permitted to continue their allegedly disruptive tenancy.

Included in late submissions by the landlord is a claim that the tenants are in arrears with the payment of rent. However, the focus of this hearing is on the matters in dispute as set out in the original applications, and there are no amended applications before me from either of the parties.

Analysis

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

The landlord's 1 month notice to end tenancy dated September 27, 2011 was issued pursuant to section 40 of the Act which speaks to **Landlord's notice: cause**. The particular aspect of section 40 of the Act which applies to the circumstances of this dispute is found in section 40(1)(c) of the Act which 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 or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

As to disputing the notice, section 40(4) of the Act provides:

40(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

Bearing in mind the unusual circumstances described in the Review Decision, I find that when the tenants undertook to dispute the landlord's notice on October 6, 2011, they filed their application within the 10 day period available to them to do so. As to the landlord's application for an order of possession, I find that the landlord has the burden of proving that there are sufficient grounds to establishment entitlement to same.

Further to the absence of a written tenancy agreement which, pursuant to section 18 of the Act (**Terms respecting pets**), might include terms or conditions related to pets, the landlord testified that a park committee has not been established in the subject manufactured home park. For the information of the parties, section 31 of the Act speaks to **Establishment of park committee**. As well, section 33 of the Act addresses **Park committee role in dispute resolution**.

Additionally, while they may exist, there is no documentary evidence before me of formally established park rules. In this regard, the attention of the parties is directed to section 32 of the Act which speaks to **Park rules**.

Section 22 of the Act addresses **Protection of tenant's right to quiet enjoyment**, and provides as follows:

22 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23 [*landlord's right to enter manufactured home site restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Further, Residential Tenancy Policy Guideline # 6 speaks to “Right to Quiet Enjoyment,” and provides in part as follows:

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behavior. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

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. A landlord would not be held responsible for interference by an outside agency that is beyond his or her control, except that a tenant might be entitled to treat a tenancy as ended where a landlord was aware of circumstances that would make the premises uninhabitable for that tenant and withheld that information in establishing the tenancy.

All things considered, the tenants identified a desire to vacate the manufactured home park, but only after certain renovations to the manufactured home are completed and it is sold. With the passage of time and the continuous erosion of goodwill, no settlement around a particular end date to tenancy could be achieved between the parties during the hearing, and the tone in exchanges between them was antagonistic.

I find that miscellaneous concerns of the landlord and other residents have repeatedly been brought to the tenants’ attention over several months. The nature of these complaints is summarized in the petition. Despite efforts the tenants claim to have made to address these concerns, complaints from other residents have persisted.

Notwithstanding the absence of formality in the tenancy agreement and in the standard of expectations around neighbourly and considerate conduct within the manufactured home park, I find on a balance of probabilities that the landlord has proven grounds for cause to end the tenancy on the basis that the tenants have “significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park.” In short, I find that they have breached the right of quiet enjoyment of other residents, and that the landlord has established entitlement to an order of possession.

As the landlord has succeeded in the application, I find that the landlord has established entitlement to a monetary order in the amount of \$50.00 for recovery of the filing fee.

Section 75 of the Act speaks to **Review of director's decision or order**, and provides:

75(1) Unless the director dismisses or refuses to consider an application for a review under section 74, the director must review the decision or order.

(2) The director may conduct a review

(a) based solely on the record of the original dispute resolution proceeding and the written submissions of the parties, if any,

(b) by reconvening the original hearing, or

(c) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Following from all of the above and pursuant to the statutory provisions set out in section 75 of the Act, the decision dated November 2, 2011, and the decision and order dated November 22, 2011, are hereby set aside.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Tuesday, January 31, 2012**. This order must be served on the tenants. Should the tenants 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.

Pursuant to section 60 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$50.00**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

The tenants' application is hereby dismissed.

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: December 29, 2011.

Residential Tenancy Branch