



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in repose to the tenants' application to cancel the One Month Notice to End Tenancy and to recover the filing fee from the landlords for the cost of this application.

One of the tenants and Council for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. Council for the landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

Both parties agree that this month to month tenancy started on April 26, 2006. Rent for this site is \$456.00 per month and is due on the first day of each month in advance.

Council for the landlord testifies that the City carried out an inspection of the mobile home park and sent the landlord a letter concerning some of the sites located within the park. The first letter sent to the landlord on November 17, 2010 indicates that the RV and mobile home park has been authorised to have 37 mobile homes sites. The letter goes on to say that 'presently there are 39 mobile home units on site, unless you can gain approval for the

two extra mobile homes, they must be removed. The city records indicate those sites 39, 401, 402 and 403 may be sites that have been rented without proper procedure'.

Council for the landlord testifies that the landlord purchased the mobile home park in 2008 and there is an action pending against the previous owners for fraud due to the deficiencies found in the park. The current owner has had to remove the unauthorised sites in order to comply with the City bylaws. These tenants site is the only occupied site that is not in compliance with these bylaws. Council for the landlord recognises that this is not the fault of the tenants however the landlord must comply with an order of a federal, British Columbia, regional or municipal government authority.

Council for the landlord states that another letter was received from the city dated October 17, 2011 concerning this site and states, in part, that 'the site is located in a Red Zone silt bluff and before any development occurs a Geo-technical report would be required and all issues addressed, further complicating this property is the internal road structure and availability of potable and emergency water supplies due to the preexisting status. To support any additional development on this property the City would also require some of the preexisting conditions be corrected. The previous owner has created a number of new mobile trailer parking pads, these pads were created without any geo technical reports and approval of the City. Unit 39 is a pad that sits directly below a large undercut silt bluff and has never been approved to be there. This trailer pad cannot be used and the trailer that is currently sited at this location must be moved'.

The letter goes on to say that 'the owners of the trailer have been made aware of the present danger and were asked to move. It would be a very sad day if a tragedy was to happen and a life was lost due to the lack of compliance by the previous land owner.

The property located at [address] is in non compliance with the city zoning and Bylaw 5-1-2001 by allowing mobile homes to be sited on parking pads that have not been approved. Therefore mobile home park pads not approved to be in use must be vacated. Unit 39 is the only unit at this time that is presently using a non-approved site'.

Council for the landlord has also provided a letter from the city dated November 16, 2011. This letter states, in part, that 'the previous letter dated October 17, 2011 serves as the official documentation advising the owners of the mobile home park that they must comply with the Bylaw and they must take steps to remedy this situation immediately or as soon as possible'.

Council for the landlord submits that the tenants are unwilling to move their trailer from the park and while he recognizes the difficult position they have been placed in, their trailer must still be removed in order for the landlord to comply with City bylaws concerning their pad and for their own safety.

Council for the landlord states the tenants were served with a One Month Notice to End Tenancy under the *Manufactured Home Park Tenancy Act* on June 08, 2011. The tenants applied to cancel that Notice and their application was upheld as the Notice did not fulfill the requirements under the Act. A second Notice to End Tenancy was served upon the tenants in person on October 26, 2011. This Notice has an effective date of December 05, 2011. This Notice has provided two reasons to end the tenancy as follows:

- 1) The rental unit/site must be vacated to comply with a government order
- 2) Non Compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

Council for the landlord withdraws the second reason given on the Notice.

Council for the landlord submits that the letter from the City inspector concerning the bylaws is an Order that the landlord must comply with and therefore the landlord is forced to evict the tenants from their site.

The tenant testifies that they understand the reason why the Notice was given and they understand why the City has sent the landlord these letters. The tenant states that the City has provided no other evidence to show that the bluff is a danger to life or property. The

tenant states there are other mobile homes located in the "Red Zone" and they have not been asked to vacate their sites.

The tenant testifies she has requested more information from the City concerning the Geo technical reports but has not yet received this information. The tenant testifies that they have never seen anyone from the city carry out any tests of the hill behind their home and they have no evidence as to what reasons the City inspector has based his opinion on when he issued this Order to the landlord. The tenant testifies they have lived at this site for five years and the site has been in place for eight years. Since that time there has been no evidence that the land has shifted.

The tenant testifies when they purchased this mobile home the landlords at that time allowed them to use this site. If the site cannot now be used the present landlord should be held responsible to either relocate the tenants' home or to obtain any necessary permits and approvals from the City for the tenants home to remain on this site.

The tenant states they feel this is an issue between the landlord and the City and they have been caught up in the middle of it when it is not their fight. The landlord has the duty of care to ensure they can protect the tenants' right to quiet enjoyment of their site. If the landlords cannot obtain approval for this site they should be held responsible for all costs incurred by the tenants to remove their home. The tenant states she has investigated the possibility of removing their home to another park in the area but there are no vacancies at present and many of the parks only accept new homes.

The tenant states her home is worth \$116,000. The tenant states they have put their home up for sale at half its value but even if it sells the new buyers would have the same problems.

Council for the landlord states that the previous owners will be held responsible and the tenant may have a claim in tort against them and is not without remedy. If the bluff was to come down this current landlord would be held responsible for a loss of life or property because they did not comply with an Order from the city.

Council for the landlord requests that the One Month Notice to End Tenancy is upheld and seeks an Order of Possession effective on December 05, 2011. This date maybe extendable if the tenants are unable to remove their home by the effective date of the Notice.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

In this matter the landlord acknowledges that the tenants are not at fault however the landlord must comply with the Order from the City to end this tenancy based on the reasons set out in the letter from the City Property Use Inspector which orders the landlord to comply with the zoning Bylaw 5-1-2001. Therefore, I find the landlord has met the burden of proof in this matter.

Consequently, pursuant to s. 40(1)(j) of the Act which states the manufactured home site must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority, I find the One Month Notice to End Tenancy is upheld and the tenants' application to cancel the Notice is dismissed without leave to reapply.

Council for the landlord has requested an Order of Possession during the hearing. An Order of Possession has been issued to the landlord pursuant to s.48 of the Act.

As the tenants have been unsuccessful with their claim they must bear the cost of filing their own application.

I strongly urge both parties to seek independent legal advice and or remedy.

Conclusion

The tenant's application is dismissed. The One Month Notice to End Tenancy will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on December 05, 2011 This order must be served on the tenants and may be filed in the Supreme Court 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 *Residential Tenancy Act*.

Dated: November 25, 2011.

Residential Tenancy Branch