



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, AS, O, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy and an order allowing the tenant to assign his tenancy agreement in the event of a sale of his manufactured home.

The tenants also seek direction on what to do about the landlord's refusal to cash their rent cheques.

The hearing was conducted via teleconference and was attended by the male tenant only.

The tenant testified the landlords were served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 52(3) of the *Manufactured Home Park Tenancy Act (Act)* by registered mail on August 7, 2012 in accordance with Section 82. As per Section 83, the documents are deemed received by the landlord on the 5th day after it was mailed.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel an "Eviction Notice"; to an order allow the tenants to sell their manufactured home with the right to assign the tenancy agreement; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 40, 60, and 65 of the *Act*.

Background and Evidence

The tenant testified the tenancy began in October or November of 1998 with a current monthly rent of \$300.00 due on the 1st of each month.

The tenant submitted a copy of a letter dated July 29, 2012 from the landlord to the tenant entitled "Eviction Notice". The letter states that the male tenant is to vacate the rental pad no later than August 31, 2012. The letter lists 4 "reasons" that landlord cites

to end the tenancy. The tenant confirmed that he has received no other written notices from the landlord related to ending the tenancy.

In the "Eviction Notice" reason number 4 states: "You have knowingly given the Residential Tenancy Board and other tenants false information about ownership and management of the Trailer Park, and most recently by advertising that a purchaser of your trailer may rent at Riverside despite notice from Management that sale of your unit does not include the right to occupy a site at Riverside."

The tenant also testified that since July 2012 the landlord has not cashed his rent cheques. While the tenant thought it may be too early to tell if the landlord has cashed September 2012 cheque as the hearing day was the first banking day for September 2012.

Analysis

Section 40(1) of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant is repeatedly late paying rent;
- b) There are an unreasonable number of occupants on the manufacture home site;
- 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;
- d) The tenant or a person permitted in the manufactured home park by the tenant has engaged in illegal activity that
 - i. Has caused or is likely to cause damage to the landlord's property,
 - ii. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the manufactured home park, or
 - iii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- e) The tenant or a person permitted in the manufactured home park by the tenant has caused extraordinary damage to a manufactured home site or the manufactured home park;
- f) The tenant does not repair damage to the manufactured home site, as required under section 26(3), within a reasonable time;
- g) The tenant
 - i. Has failed to comply with a material term, and
 - ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

- h) The tenant purports to assign the tenancy agreement or sublet the manufactured home site without first obtaining the landlord's written consent or an order of the director as required by Section 28;
- i) The tenant knowingly gives false information about the manufactured home park to a prospective tenant or purchaser viewing the manufactured home park;
- j) The manufactured home site must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- k) The tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - i. The date the tenant receives the order;
 - ii. The date specified in the order for the tenant to comply with the order.

Section 40(3) of the *Act* states a notice under Section 40 must comply with Section 45 [form and content of notice to end tenancy]. Section 45 outlines that such a notice must be signed and dated by the landlord; give the address of the manufactured home site; state the effective date; state the grounds for end the tenancy; and when given by the landlord be in the approved form.

As the landlord has written the "Eviction Notice" in the form of a letter and has not used the Notice available on the Residential Tenancy Branch website – I find the landlord has failed to issue a notice that is compliant with Section 45 and therefore I find the notice is not valid or sufficient to end the tenancy.

Section 28 of the *Act* stipulates a landlord may withhold consent to assign a tenancy agreement or sublet a tenant's interest in a manufactured home site only in the circumstances prescribed in the regulations.

Section 48 of the Manufactured Home Park Tenancy Regulation provides grounds by which a landlord may withhold consent to assignment of a tenancy agreement. Of all of the grounds listed there is only one ground that allows the landlord to pre-emptively withhold consent and that is that the manufactured home does not comply with housing, health and safety standards required by law.

As I have no evidence before me that the home does not comply with housing, health and safety standards required by law, I find the landlord has no grounds to withhold consent on any assignment requests provided by the tenant, without providing adequate and good faith assessment of any individual requests for consent to assign the tenancy agreement.

I accept the undisputed testimony of the tenant that they have provided the landlord with rent for the months of July, August and September 2012 by way of cheques provided to the landlord and that the landlord has failed to cash these cheques.

I caution the landlord that while a landlord may withhold consent to assign, based on a request, if the tenant has any outstanding rent or arrears or end a tenancy for non-

payment of rent the landlord cannot withhold consent or end the tenancy if he deliberately chooses not to cash post-dated rental cheques already in his possession for the tenant's rental payments.

Conclusion

Based on the above, I order the "Eviction Notice" dated July 29, 2012 provided by the landlord to the tenants is not a notice to end tenancy and the tenancy remains in full force and effect.

I find the tenants are entitled to monetary compensation pursuant to Section 60 and I grant a monetary order in the amount of the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: September 04, 2012.

Residential Tenancy Branch