



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, FF

Introduction

This matter dealt with an application by the Tenant for an order to have the Landlord Comply with the Act, regulations and tenancy agreement, to set conditions on the Landlord's right of entry and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on June 13, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 82 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Has the Landlord complied with the Act, regulations and the tenancy agreement?
2. Are the Tenants entitled to receive an Order to set conditions on the Landlord's right of entry?

Background and Evidence

This tenancy started in December, 2002 as a month to month tenancy. Rent is \$300.00 per month payable in advance of the 1st day of each month.

The Tenant said they purchased the mobile home on this property in December, 2002 and then continued to rent the land that is approximate ½ acre that the mobile home and services are situated on. The Tenant said the legal description of the property is [suppressed to protect privacy]. The Tenants continued to say the property was sold in April 2013 and they were told the tenancy would continue. Following this the Landlord or the new owner told the Tenants he was going to build a shop on the property. The Tenants said they did not dispute this at first, but since that time the Landlord is entering

the property at will and the Tenants are concerned he may damage the services to the mobile home as the Landlord is excavating near their septic system. The Tenants also said the Landlord has been abusive to them and they are concerned about what the Landlord may do next. The Tenants said they are concerned for their safety.

The Tenants continued to say about May 1, 2013 the Landlord said they had to move off the property and the Landlord gave the Tenants a hand written note informing them to move in 60 days. The Tenants said this made them very concerned as they would have to move their mobile home and other building and this was not enough time. As a result the Tenants contacted the Residential Tenancy Branch to determine their rights.

The Tenants said they made the application because the Notice to End the Tenancy is not valid and the Landlord is not complying with the Act in regards to entering the property.

The Tenants said they are willing to move, but they need more time and they should be compensated for ending the tenancy as indicated in the Act.

The Tenants also said they are concerned about the tenancy because they do not have a written tenancy agreement.

Analysis

Section 42 of the Act says: Landlord's notice: landlord's use of property

42 (1) Subject to section 44 [*tenant's compensation: section 42 notice*], a landlord may end a tenancy agreement by giving notice to end the tenancy agreement if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park.

(2) A notice to end a tenancy under this section must end the tenancy effective on a date that

(a) is not earlier than 12 months after the date the notice is received and is the day before the day in the month, or in

the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(b) if the tenancy agreement is a fixed term tenancy agreement, is not earlier than the date specified as the end of the tenancy.

(3) A notice under this section must comply with section 45 *[form and content of notice to end tenancy]*.

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the manufactured home site by that date.

Section 44 of the Act says: Tenant's compensation: section 42 notice

44 (1) A landlord who gives a tenant notice to end a tenancy under section 42 *[landlord's use of property]* must pay the tenant, on or before the effective date of the notice, an amount that is equivalent to 12 months' rent payable under the tenancy agreement.

(2) In addition to the amount payable under subsection (1), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 42 within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of 6 times the monthly rent payable under the tenancy agreement.

Section 45 of the Act says: Form and content of notice to end tenancy

45 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the manufactured home site,
- (c) state the effective date of the notice,
- (d) except for a notice under section 38 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) **when given by a landlord, be in the approved form.**

The Tenant has provided the Note or the Notice to End the Tenancy that the Landlord has given them on June 1, 2013 and I have reviewed it. The Landlord's Note or Notice to End Tenancy dated June 1, 2013 is not on the approved form and it does not comply with the Act; therefore the Landlord's Note or Notice to End Tenancy dated June 1, 2013 is **not valid** and I order the tenancy to continue as verbally agreed to at the start of the tenancy. The Landlord's Notice to End Tenancy is cancelled.

It should be note that the Landlord can end a tenancy by issuing a Notice to End the Tenancy for the Landlord's Use of the Property. Information on how to end a tenancy using this method is available on the Residential Tenancy Branch's web site www.rto.gov.bc.ca or by contacting an information officer with the Residential Tenancy Branch at 1-800-665-8779.

With respect to the Tenants' application to set restriction on the Landlord's right of entry; I accept the Tenants' testimony that they have a tenancy agreement on the property described as [suppressed to protect privacy] consisting of approximately ½ an acre. Consequently I find the Landlord must comply with the Act if he wants to gain entry to the property. Section 22 (protection of the tenant's right to quiet enjoyment) and section 23 (Landlord's right to enter a manufacture home site restricted) should be noted as guidelines for the Landlord to enter the property. In addition as a result of the Tenants concerns about their safety and their concerns about not having a written tenancy agreement, I award an Order of Possession to the Tenants valid to the end of

the tenancy or to June 1, 2014. As well I Order the Landlord to obtain written or verbal consent from the Tenants prior to entering the property unless there is an emergency situation.

As the Tenant have been successful in this matter I order the Tenants to recover the filing fee for this proceeding of \$50.00 by reducing the August, 2013 rent from \$300.00 to \$250.00.

Conclusion

The Landlord's Notice to End Tenancy dated June 1, 2013 is cancelled as the Notice is not valid.

The Tenants will receive an Order of Possession valid until the end of the tenancy or until June 1, 2014.

I order the Landlord to obtain consent to enter the property from the Tenants prior to entering the property unless an emergency exists until the end of the tenancy or until June 14, 2014.

I order the Tenants to reduce the August, 2013 rent from \$300.00 to \$250.00 to recover the filing fee for this application.

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: July 10, 2013

Residential Tenancy Branch

