



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: ET

Introduction:

This hearing deal with an application by the landlord seeking to end this tenancy early without notice, pursuant to section 49 of the Manufactured Home Park Tenancy Act.

Despite being served by posting the Notice of Hearing on the tenant's door and by registered mail, the respondent tenant did not appear.

Issue to be Determined:

Is the landlord entitled to an Order of Possession to end the tenancy early without notice?

Background and Evidence:

The landlord was not certain when the tenancy began because the Park was recently purchased, but the existing records of the tenancy show it was in effect in January 2012. The monthly pad rent is \$429.48.

The landlord testified that they received a geotechnical surveyor report that raised concerns about the slope stability where the tenant's manufactured home is now situated. According to the landlord, the tenant's site and others "*do not meet the current safety standards for landslide hazard required by the 2012 BC Building Code*".

The landlord testified that, because the report indicated that the tenant's unit in particular is at a high risk of loss of foundation support, they believe that that the home must be removed. The landlord's position is that the tenancy contract is frustrated as it has become impossible to meet the terms of the contract through circumstances beyond anyone's reasonable control.

Analysis:

Early End of Tenancy Without Notice

In making an application for an early end to this tenancy the landlord has the burden of proving that the criteria for ending the tenancy without notice under section 49 of the Act has been met.

Section 49(1) of the Act permits a landlord to make an application for dispute resolution to request an order:

- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 40 [*landlord's notice: cause*], and
- (b) granting the landlord an order of possession in respect of the manufactured home site.

However, section 49(2) states that the arbitrator may only make an order specifying the date on which the tenancy ends and the effective date of the order of possession the arbitrator is satisfied that:

- (a) the tenant or a person permitted in the manufactured home park by the tenant has done any of the following:
 - (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;
 - (iii) put the landlord's property at significant risk;
 - (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,
 - (B) 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
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
 - (v) caused extraordinary damage to the manufactured home park,

In addition to the above, it must also be proven that:

(b) it would be unreasonable, or unfair to the landlord or other occupants of the manufactured home park, to wait for a notice to end the tenancy under section 40 [*landlord's notice: cause*] to take effect.

In the case before me, I find that the landlord has not sufficiently proven that the above criteria has been met to warrant the termination of this tenancy without Notice.

Frustrated Tenancy

The landlord has also argued that the tenancy should be ended based on the fact that, according to the landlord, the tenancy contract has been frustrated.

Section 49 (1) of the Act permits a landlord to make an application for dispute resolution requesting an order:

(a) ending a tenancy because

(i) the manufactured home site is not capable of being occupied by a manufactured home, or

(ii) the tenancy agreement is otherwise frustrated, and

(b) granting the landlord an order of possession of the manufactured home site.

Section 49(2) states that if the arbitrator is satisfied that a manufactured home site is not capable of being occupied as a manufactured home site or the tenancy agreement is otherwise frustrated, the director may make an order

(a) deeming the tenancy agreement ended on the date the director considers that performance of the tenancy agreement became impossible, and

(b) specifying the effective date of the order of possession granted to the landlord.

The Residential Tenancy Policy Guideline states that a contract is frustrated where, without the fault of either party, the agreement becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible.

Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

However, the Guideline suggests that the test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.

Although the landlord provided a copy of a draft report from a geotechnical firm, I find that the information is complex and technical. It is not clear whether or not some remedial intervention could be done to stabilize the site.

I find that the report does not appear to conclude that the site occupied by this tenant must be cleared due to an emergency situation, which would be necessary to make a clear and compelling case that this contract is beyond performance due to frustration.

Given the above, I find that the landlord has not sufficiently met the burden of proof to establish that this tenancy must be terminated early without Notice pursuant to section 49 of the *Act* nor has the landlord succeeded in establishing that the tenancy contract is frustrated. Accordingly, I hereby dismiss this application in its entirety without leave..

Conclusion:

The landlord is not successful in the application seeking to terminate the tenancy early without Notice and the application is therefore dismissed without leave.

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: August 28, 2014

Residential Tenancy Branch

