Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vista Village Trailer Park Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR, OLC, FF

Introduction

This hearing was convened by way of conference call concerning 2 applications filed by the tenants. Both applications were filed on August 15, 2014, and the first application seeks an order permitting the tenants more time to dispute a notice to end tenancy than provided in the *Manufactured Home Park Tenancy Act*, for an order cancelling a notice to end tenancy for unpaid rent or utilities and to recover the filing fee from the landlords. The second application seeks an order that the landlords comply with the *Act,* regulation or tenancy agreement and to recover the filing fee. The applications have been joined to be heard together.

The named landlord attended the hearing and acted as agent for the landlord company. Both tenants also attended and all parties gave affirmed testimony. The parties each called one witness who gave affirmed testimony. The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other, and were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. The witnesses were called out of the ordinary order to facilitate schedules.

Two other persons joined the call and identified themselves as Housing Advocates. They did not represent the tenants or testify, but were there to support the tenants. The landlord did not object.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Should the notice to end tenancy be cancelled?

- Have the tenants established that the landlords should be ordered to comply with the *Act,* regulation or tenancy agreement, and more specifically for a determination that Rule 11 of the Park Rules is unconscionable?

Background and Evidence

The landlord testified that this tenancy began on April 1, 2012 for the rental of a manufactured home site in a manufactured home park. Rent in the amount of $349.00 per month is payable in advance on the 1st day of each month. The tenants refused to sign a tenancy agreement, and the landlord wrote to the tenants on several occasions. All requests were ignored entirely as well as the landlord's request for the tenants to provide post-dated cheques, which is part of the tenancy agreement, the rules of the park and is contained in the application to rent a site.

The landlord further testified that the tenants failed to pay rent when it was due for the month of July, 2014 and on July 9, 2014 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail, and has provided copies of the Canada Post documentation. A copy of the 2 page notice has also been provided and it is dated July 9, 2014 and contains an expected date of vacancy of July 23, 2014. The notice states that the tenants failed to pay rent in the amount of $391.00 that was due on July 1, 2014. The landlord testified that the amount quoted in the notice includes a late fee which is provided for in the tenancy agreement.

The tenants paid rent on July 21, 2014 by way of an electronic transfer which was received by the landlord the next day along with the following month's rent. The landlord issued 2 receipts that were clearly marked "For Use and Occupancy Only." Again for September, the landlord issued a similar receipt for the payment the tenants made on September 1, 2014 by personal cheque. The landlord received some post-dated cheques at that time, and the tenant told the landlord that it had slipped her mind.

The landlord further testified that the tenancy agreement specifically states that in order for a purchaser of a manufactured home in the park to reside in the park, that purchaser would be required to be approved by the landlord in advance. Someone applied for a tenancy wanting to purchase the manufactured home but the landlord denied the person tenancy because upon checking with the reference provided, the reference stated that he didn't know the person. When asked if the landlord had declined to check out references of another perspective purchaser in August, 2014, the landlord replied that she couldn't locate an application from August. When asked if the landlord had called the perspective purchaser directly and advised that the references wouldn't be checked unless certain conditions were met, the landlord replied that she does not

remember calling him and doesn't see an application for tenancy. When asked who the landlord told about conditions, the landlord replied that sometime in August, 2014 the landlord told the tenants that asphalt they had spread in the driveway would have to be removed and the grass returned. The tenants had also taken out a fence and a shed without the landlord's prior permission. When asked if the landlord had told an applicant that the electrical condition had been complied with, the landlord responded that she was not aware of that. The person was not accepted as a tenant because the reference didn't know the person. The tenants had offered to get another representative of that landlord to provide a reference, but the landlord refused that offer.

The landlord was also asked why the refusal to accept the first applicant didn't mention anything about asphalt, to which the landlord replied that she didn't notice it until it was brought to her attention by the on-site manager at a later date.

When asked if the landlord refused the second applicant, the landlord replied that she does not recall. The landlord was also asked why the landlord won't consider other applications until the conditions are met, to which she replied that it's now October and there will soon be snow, but the landlord will consider applications.

The landlord has also provided evidentiary material including a letter dated August 5, 2014 from the landlord to the tenants. It reiterates that section 11 of the Park Rules states, in part:

> "Before listing a home for sale, the owner of the home to be sold must notify the Landlord. The Tenant must provide the Landlord with a full inspection report of the manufactured home including but not limited to electrical, roofing, heating, plumbing including heat tape, leaking windows, all health and safety issues such as mold in or on the walls or ceiling, the wiring, fire rating and safety of any wall paneling, environmental damage from leaking vehicles or an oil tank, and all other deficiencies. These must be repaired prior to the sale of the home. The Home must comply with all current building and electrical codes and the roof must be in good shape. There must be a fire extinguisher, smoke detector, carbon monoxide detector. Wood heaters are to be removed and replaced with a furnace or more environmentally friendly source of heat." The letter goes on to say that once the home and site is cleaned and repaired and the tenant provides proof, the tenant will be provided with an application for tenancy for the purchasers to complete. The tenant and the purchaser must provide proof of transfer of title, and failure to do so will result in an end to the tenancy and the home will have to be removed from the park. The letter further states: "I understand you have a fellow that wishes to apply for tenancy. No one will be approved until you are in compliance with Section 11 of the Park rules."

A similar letter has been provided dated July 18, 2014 as well as a copy of the Park Rules.

Also provided is a copy of a string of emails exchanged between the landlord and the tenants wherein the tenants agree to removing the asphalt and planting grass and ask the landlord if the landlord is planning to approve the applicant that is interested in purchasing the home upon those conditions. The landlord's response is that for now, the person is declined until Section 11 of the rules is complied with. The landlord testified that the email was written because the tenant was being difficult and made allegations. She further testified that Section 11 of the Park Rules is for the health and safety of the park and other tenants. It also prevents tenants who do not have the means to make repairs to homes that they purchase in the park from abandoning those that are in poor shape. She testified that a normal inspection report would cover all of it except the yard stuff, and the law requires that the electrical be up to current standards.

The landlord was again asked if she had refused the second applicant, to which she responded that she does not recall. When asked if the landlord admits declining that person because the landlord wasn't satisfied that the tenants had complied with Section 11 of the Park Rules first, the landlord replied that she was trying to remember and was looking for the application in some paperwork.

The landlord submitted that the tenants are deemed to have accepted the end of the tenancy for not applying for dispute resolution disputing the notice in accordance with the *Act,* and stated that she asked the tenants if they would want a licence to occupy until the home sells, but the landlord has not received a response. The landlord asks for an order of possession.

During testimony, I told the landlord that I found her answers and her testimony to be very evasive, to which she responded that she was not trying to be.

The landlord's witness testified that he is the landlord's on-site manager. He testified that the tenants had put asphalt where the grass had been on the manufactured home site and lengthened the driveway without any permission. He stated that it isn't permanent asphalt, but crushed gravel and would have to be removed with a machine. The witness did not talk to the tenants about it until 2 years later because it was already done when the witness noticed it, but it's in the park rules that tenants are to park in the driveway.

The witness also testified that he received an application for tenancy from the tenants, but never did receive a signed tenancy agreement.

The witness also denies receiving any evidence from the tenants about an electrical inspection but did see the electrician at the manufactured home of the tenants.

The witness is aware that the tenants were attempting to sell their manufactured home, but doesn't know why the rules weren't mentioned when the first offer was made. The witness believes that the sale didn't go through because the landlord called to get references, and no one asked for the rules. Another applicant got a form to complete from the witness and the witness told him to fill it out and advised that the applicant would have to be accepted as a tenant and that his credentials would be checked out. He also asked the applicant if he had quads, bikes or pets, and stated that if they did own any they would be denied tenancy. During cross examination, the witness changed his answer stating they would not be denied tenancy, but did not specify why he had asked the applicant about quads, bikes and pets. The applicant did not return the application form to the witness.

Another person gave the witness an application, and the witness testified that he tells all applicants to deal with the landlord, and the landlord does all the reference checks.

The first tenant testified that the tenant filled out a tenancy agreement and an application to rent the manufactured home site both at the same time and gave them to the landlord's on-site manager and told the landlord that.

The tenants put the manufactured home on the market for sale and obtained a buyer for $65,000.00. The landlord declined the purchaser as a tenant because whomever she talked to didn't know the person, so the tenant called the reference and asked for a written statement. The reference told the tenant he handles hundreds of places and didn't recall the name, but stated that he would check records and prepare a letter. The landlord was advised of that, but declined to accept it. The tenant further testified that now the way the market is, the tenants will be lucky to get $40,000.00, and word has it that the owner is difficult to deal with.

When a second purchaser applied for tenancy, the landlord refused to check out the application at all until the tenant complied with Rule 11. The tenant further testified that research has provided the tenant with Residential Tenancy Policy Guideline #19 – Assignment and Sublet, and testified that none of it applies to the landlord's Rule 11. Everything that the landlord demands in that rule are issues between the seller and the purchaser and the realtor, not the landlord.

The tenant further testified that the notice to end tenancy was received on July 21, 2014; the tenants did not have access to the post office until then. As soon as the notice was received, the tenant paid rent. The tenant also denies refusing to give the landlord post-dated cheques; the tenants believed they had sold the home so didn't notice when they had depleted. The tenant also testified that the landlord does not want the tenants there but also does not want the tenants to sell.

The tenant also pointed out that the landlord's ledger is false, and the tenant had explained to the landlord that $349.00 plus $25.00 is not $391.00. The amount of rent is $349.00, plus a $25.00 late fee adds up to $374.00. The amount on the notice to end tenancy is $391.00.

The second tenant testified that the electrical issue contained in the landlord's Rule 11 is a requirement by law, and the tenants hired an electrical contractor who was referred to the tenants by the landlord's on-site manager, and paid $1,200.00 for those services. The tenants then submitted a letter to the on-site manager and to the realtor as evidence that they had complied.

Within a week of listing the home, the tenants received almost a full-price offer, on April 26, 2014. There was no mention of asphalt. The tenant also testified that there is no asphalt, but gravel. There was no mention of removing it, but the landlord wouldn't accept the applicant despite another opportunity to obtain a reference, and the tenants then lost the sale.

The market has softened due to industrial projects being placed on hold, and the tenants had to reduce the price to $55,000, and again had an offer. The tenant got another application from the on-site manager. The landlord subsequently contacted the purchaser quoting Rule 11, none of which was mentioned for the first applicant. Now the tenants don't know if they will be able to sell at all. The landlord has refused everyone who has tried to buy a manufactured home and the realty company now doesn't want to list a home there because it's a waste of their time. The tenants don't know what to do now, they've complied with everything. If the landlord had told the tenants that they had to remove the gravel, they would have done so, and testified that there never was any grass. The home is still listed, but the tenant believes the next offer will have a similar result.

The tenants' witness testified that he talked to the landlord's on-site manager multiple times every day after work about an application for tenancy because he wanted to buy the tenants' manufactured home. The on-site manager's first question was if the witness had pets or toys. The on-site manager gave the witness an application to complete, but the witness threw it away because the landlord called him advising that

she would not rent to him. The landlord told him that she didn't have a problem with him but the tenants had to put up a fence, get a home inspection and clean up some asphalt chips in the driveway. So it never went any further and the witness couldn't apply for a loan.

Analysis

I have reviewed the evidentiary material of the parties, and particularly the documents obtained through Canada Post showing that the registered mail containing the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was sent to the tenants on July 9, 2014 at the dispute location. The *Manufactured Home Park Tenancy Act* states that documents served in that manner are deemed to have been served 5 days later, which would be July 14, 2014. The documentation also shows that it was received by the tenants on July 21, 2014. The *Act* also states that if a tenant doesn't pay the rent in full or dispute the notice within 5 days the tenant is conclusively presumed to have accepted the end of the tenancy. Therefore, I find that the last day that the tenants could have disputed the notice is July 19, 2014 and rent was paid after that. The landlord says it was received on the 22nd and has provided a copy of a receipt dated July 21, 2014; the tenant says it was the 21st. Although the *Act* doesn't say that documents served by registered mail are deemed served 5 days after mailing unless there is proof to the contrary, the *Act* does permit a tenant to apply for more time to dispute it, and the tenants in this case have done so. In order to be successful, there must be some compelling reason that would convince an Arbitrator that more time should be ordered.

The tenant testified that they no longer reside at the manufactured home park and collected the mail which contained the notice and then immediately paid the outstanding rent as well as rent for the following month. The tenant also testified that the parties thought they had a sale so didn't think about giving the landlord more post-dated cheques. The landlord testified that the tenants advised the landlord that it had slipped their minds, which in my view corroborates the tenant's testimony. Further, the tenants have provided evidence of the sale which contains a possession date of May 24, 2014. Therefore, I accept that the tenants believed they had a sale and would not be required to pay rent beyond the possession date and the fact that the landlord didn't have anymore post-dated cheques had simply slipped their minds. In the circumstances, I find that the tenants have established a compelling reason to convince me that the tenants should be granted more time to dispute the notice because they believed they had a sale and paid the rent as soon as they received the notice, and I so order. I find that the tenants' application is treated as though it were made within the time required

under the *Act.* Rent has been paid in full, and therefore, the landlord is not entitled to an order of possession.

With respect to the tenants' application for an order that the landlord comply with the *Act,* regulation or tenancy agreement, I have carefully considered Rule 11 in the Park Rules and I find that rule to be unconscionable. I refer to Residential Tenancy Branch Policy Guideline 8 – Unconscionable and Material Terms what states that a term in a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party. It also states that a term in a tenancy agreement is unconscionable if "... the term is so one-sided as to oppress or unfairly surprise the other party. Such a term may be a clause limiting damages or granting a procedural advantage. . ." Therefore I order the landlord to comply with the *Act* and refrain from enforcing that provision of the Park Rules or attempting to enforce it.

Since the tenants have been successful with both applications, the tenants are also entitled to recovery of the filing fees, and I order the tenants be permitted to reduce rent by $100.00 for a future month as recovery.

Conclusion

For the reasons set out above, the tenants are herby granted more time to dispute a notice to end tenancy.

The notice to end tenancy is hereby cancelled and the tenancy continues.

I hereby order the landlord to comply with the *Manufactured Home Park Tenancy Act* by refraining from enforcing Rule 11 in the Park Rules or attempting to enforce it.

I further order the tenants to reduce rent for a future month by $100.00 as recovery of the filing fees for the cost of the applications.

This order is final and binding.

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: October 22, 2014

Residential Tenancy Branch