



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Crystal River Court Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPB/OPC, MND, FF
CNC, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession / a monetary order as compensation for damage to the unit, site or property / and recovery of the filing fee; and ii) by the tenant for cancellation of a notice to end tenancy for cause / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on September 01, 2012. The tenancy agreement provides that monthly rent is due "on or before the first day of each month." Monthly rent is currently \$405.00. The subject manufactured home is not presently the tenant's principal residence, and his preferred mailing address is a post office box located in Aldergrove, B.C.

Arising from rent which was unpaid when due on the first day of the month, 3 separate 10 day notices to end tenancy were issued variously, by date of October 04, 2013, April 08, 2014 and October 03, 2014. Receipts submitted in evidence document dates when the landlord received rent for the following 9 months of 2014 as follows:

January 06; February 7; March 10; April 14; May 06; June 09; August 06;
September 04; October 03

Further to the 10 day notices, as above, the landlord issued a 1 month notice to end tenancy for cause dated June 01, 2013. Arising from this, both parties filed previous

applications for dispute resolution (file # 808823 & # 807753). In the result, by way of decision dated July 10, 2013, the Arbitrator declined jurisdiction after determining that “both of these applications are substantially linked to matters that are currently before the Supreme Court of B.C.”

Subsequently, a more recent 1 month notice to end tenancy for cause was issued by date of August 21, 2014. The landlord testified that the notice was personally served on that same date, but that the tenant “threw the Notice back...” The landlord testified that the notice was then posted to the unit door on that same date. The landlord also noted that there has been some confusion about the tenant’s proper or preferred address for service. A copy of the 1 month notice was submitted in evidence. The date shown by when the tenant must vacate the unit is September 30, 2014, and reasons identified in support of its issuance are as follows:

Tenant is repeatedly late paying rent

Tenant has not done required repairs of damage to the unit / site

Breach of a material term of the tenancy agreement that was not corrected within a reasonable period of time after written notice to do so

The tenant testified that he pays rent by way of money order sent by mail, and that the money order is often put into the mail on the last day of the month which precedes the month for which payment is due. The landlord testified that the dates shown on receipts reflect the date when rent is received, and that receipts are not routinely provided to tenants unless they request them. The tenant did not dispute the landlord’s claim that rent is not consistently in the landlord’s possession on the first day of each month as required by the tenancy agreement.

The landlord filed an application for dispute resolution on October 23, 2014. The tenant’s application for dispute resolution was filed on September 25, 2014, re-faxed to the Branch again on September 26 and re-faxed yet again on September 29, 2014.

The tenant claims that he cannot clearly recall that he was served with the 1 month notice dated August 21, 2014. Rather, he recalls that he was given a “stop work” order. The tenant further claims that at such time as he later found the notice taped to his unit door, it was some while after August 21, 2014, and nearer to the date when he initially filed his application to dispute the notice on September 25, 2014. Further, the tenant claims that there was only 1 of what is a 2 page notice posted on the door at such time as he found it.

In summary, the tenant seeks cancellation of the 1 month notice to end tenancy for cause, in addition to recovery of the \$50.00 filing fee, while the landlord seeks an order of possession for cause, in addition to recovery of the \$50.00 filing fee and \$3,500.00 for anticipated costs to “dispose of fill and railway ties.”

Finally, the tenant argues that the circumstances of this dispute have not changed since 2013 when the Arbitrator previously declined jurisdiction. In short, he claims that the dispute is still substantially linked to matters currently before the Supreme Court. The landlord counters that Court action initiated by the tenant on May 31, 2013 is not progressing, and reflects the tenant’s “delaying tactic while he tries to sell the home.”

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.gov.bc.ca/landlordtenant

Based on the documentary evidence and testimony, I find that some of the matters in dispute remain linked substantially to a matter that is before the Supreme Court. In this regard, section 52 of the Act addresses **Determining disputes**, and provides in part:

52(2) Except as provided in subsection (4), if the director receives an application under subsection (1), the director must determine the dispute unless

(c) the dispute is linked substantially to a matter that is before the Supreme Court.

Following from the foregoing, I find that I lack jurisdictional authority to proceed to decide the landlord’s application on the basis of the following grounds identified on the 1 month notice to end tenancy dated August 21, 2014:

Tenant has not done required repairs of damage to the unit / site

Breach of a material term of the tenancy agreement that was not corrected within a reasonable period of time after written notice to do so

However, the landlord has not previously sought to end tenancy for cause on the basis of the tenant’s allegedly being repeatedly late in his payment of rent, and I am unable to find that this particular matter is substantially linked to a matter that is before the Supreme Court. However, despite this, I find that the landlord has presently waived entitlement to end tenancy for cause on the basis of repeatedly late payment of rent; I

make this finding based on the landlord's apparent willingness to accept rent on days that fall subsequent to the first day of the month over a relatively extended period of time, without giving formal notice to the tenant that effective from a particular date in future, payment received after the first day of the month will be considered to be late.

Following from the above, the attention of the parties is drawn to section 20 of the Act which addresses **Rules about payment and non-payment of rent**, in part:

20(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Further, Residential Tenancy Policy Guideline # 38 speaks to "Repeated Late Payment of Rent," and provides in part:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

Further to the above, I am unable to conclude that the 1 month notice was properly served. Specifically, there is no witness testimony or sworn affidavits before me from the landlord's agent serving the notice, in relation to how and when it was served and what, if any, instruction was given to the tenant in regard to the nature of the notice at the time when he allegedly discarded it after being personally served on August 21, 2014. Additionally, there is some question around whether only 1 page of the 2 page notice was found on the door of the unit by the tenant at such time as he claims to have discovered it on or about September 25, 2014.

As a result of all the above, the landlord's application for an order of possession and a monetary order as compensation for damage to the unit, site or property is dismissed, and the tenancy presently continues in full force and effect. Both applications to recover the filing fee are hereby dismissed.

Finally, and as previously noted, the subject manufactured home is not presently the tenant's principal residence, and he confirmed during the hearing that his preferred address for service is not the address of the subject manufactured home but, rather, his post office box mailing address in Aldergrove, B.C.

In relation to service of documents, the attention of the parties is drawn to the following particular sections of the Act:

Section 81: **How to give or serve documents generally**

Section 82: **Special rules for certain documents**

Section 83: **When documents are considered to have been received**

Conclusion

The landlord's 1 month notice to end tenancy for cause is hereby set aside, and the tenancy continues uninterrupted.

Both applications to recover the filing fee are hereby dismissed.

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: November 14, 2014

Residential Tenancy Branch

