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 MNDC, OLC

Introduction

The tenant seeks a monetary award of damaged for the landlords' refusal of a request to assign the tenancy and for the undue stress caused to her by the landlord's alleged breach of the covenant of quiet enjoyment. She also seeks an order that the landlord comply with the law and the tenancy agreement regarding assignment of the tenancy and breach of the covenant of quiet enjoyment.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant is entitled to any of the relief claimed?

Background and Evidence

The manufactured home site is located in a 138 site park in a town in northern BC. This tenancy started in 2002 with a previous owner of the park.

The present landlord(s) acquired the park in about 2006. It appears there was no written tenancy agreement for this manufactured home site passed on with the sale.

t was not made clear at hearing who owned the park or who the landlord actually is. For the purpose of this dispute I find the landlords are the two respondents.

The current rent for the manufactured home site is $324.00 after a rent increase effective January 1, 2015.

The tenant failed to pay the July 2014 rent on time. The landlords issued a ten day Notice to End Tenancy pursuant to s.39 of the *Manufactured Home Park Tenancy Act* (the "*Act*") and the tenant applied to dispute it.

After a hearing held September 19, 2014 and by a written decision dated September 24, the arbitrator appointed to deal with the tenant's challenge to the Notice determined that the tenant's rent for July had failed to reach the landlord through no fault of the tenant. The arbitrator granted the landlord an order of possession but stated that the order was only enforceable if the tenant failed to pay the July rent ($301.00) within five days of receipt of the decision.

The order of possession itself stated "[t]his order is enforceable only pursuant to the requirements outlined in the Decision attached."

The tenant paid the outstanding July rent in full within the time period stated in the decision. The landlords knew that. The order of possession was no longer effective and could not be enforced.

Implicit in the order of possession is that the tenancy would have ended. Implicit in the cancellation of the order by payment within the allotted time period is that the tenancy continued.

During the following two months, October and November, the landlords served on or delivered the order of possession to the tenant numerous times, ten times by the tenant's advocate's count, and sent the tenant at least two letters telling her move her manufactured home off the site.

At hearing the landlord Ms. W. swore that she hadn't bothered to read the decision, either on receipt or over the following two months. She says that she had been ill and, upon receiving the decision and order of possession, simply directed her staff to serve it on the tenant.

I find that testimony to be unconvincing.

First, it is incomprehensible that a landlord would not immediately read a decision obtained following a contested hearing. The tenant's advocate referred to various prior dispute resolutions involving these landlords and in which the arbitrator made findings critical of park operations. These landlords would have or should have been keen to read arbitrator's comments. The landlord Ms. W. admits to having obtained a law degree, which makes it even more extraordinary that she would not immediately parse the arbitrator's decision for its findings.

Secondly, the order of possession, which she does admit to having read, specifically refers to the enforceability restriction in the arbitrator's decision.

After receiving the decision the tenant applied for a review of it, seeking to have the reviewing arbitrator confirm that the July rent had been paid and that the order of possession was a nullity. An application for review is not served on the other party and so the landlords had no knowledge of the review until after it was complete. The reviewing officer determined that it was not her task to make such a confirmation, based as it was on facts happening after the hearing. In my view, the application for review and the result of it are not particularly pertinent to this dispute.

The tenant testifies that during the two months following the decision she lost two sales of her manufactured home because of the wrongful position taken by the landlords. In one case she says that a potential buyer, a Mr. E.J. was told by the park caretaker, Mr. M.B. that if he bought it he'd have to move it out of the park. At hearing Mr. M.B. testified adding that Mr. E.J. could have kept the trailer on the site if he applied and was accepted as a tenant.

In the second case, the tenant's son made an offer to buy the trailer. A formal request for assignment of the tenancy, in accordance with the *Act's* regulation was given to the landlords but on November 25, 2014, was refused by the landlords on the ground that an order of possession was issued against the tenant and there was no longer a tenancy agreement. The refusal response from the landlords also reminded the tenant that she had until November 30, 2014 to remove her manufactured home from the park.

Finally, on November 28, a lawyer from the local legal assistance society wrote to the landlords on behalf of the tenant pointing out that the July rent had been paid and that the order of possession was not legally enforceable and asking for the landlords' confirmation that they would cooperate in the tenant's efforts to sell the manufactured home and assign the tenancy.

The landlords' response, rather than containing an admission of her mistake or an apology, was a further dissembling, saying that the landlords' had no written tenancy agreement and therefore there was no tenancy.

The tenant testified about other incidents she claims were acts of harassment by the landlords.

In 2006 the landlord asked for post dated rent cheques.

When she went pay Mr. M.B. her rent by money order, the landlords informed her she had to mail it.

At some time in the past, Mr. M.B. told her to get rid of a roommate because the roommate had not been “pre-approved.”

At some time in the past Mr. M.B. gave the tenant the park requirements for moving out.

At some time in the past Mr. M.B. harassed the tenant’s daughters when they were on site moving things.

Last winter the tenant’s daughters, who had been putting plastic over the windows of the manufactured home, were told by Mr. M.B. about “permit requirements.”

At some time in the past, the landlord directed the tenant to park in a different spot for two months, during some work being done in the park.

Lastly, she considers the comments Mr. M.B. made to her prospective purchaser Mr. E.J. to have been harassment.

Analysis

Residential Tenancy Policy Guideline 6 “Right to Quiet Enjoyment “defines the term:

> Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord’s actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord’s power to control.
> The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others

I find that the landlord breached the tenant’s covenant of quiet enjoyment. There perhaps can be no more fundamental breach of that covenant in its classic sense, than to deny the tenant’s legal right to exclusive possession of the site and with it, the right to command an assignment of that right to a buyer not disqualified by any of the listed reasons in the *Act* and Regulation.

The evidence is not sufficient to establish that the tenant lost a sale of her manufactured home to Mr. E.J. because of the landlords’ caretaker’s comment. The suggestion that Mr. E.J. was dissuaded from buying by a remark made by the park caretaker, a remark

the tenant would no doubt have described to him as baseless, is indicative that he was not a serious buyer.

The claim that the tenant's son was prevented by the landlord from buying the manufactured home must take into account the family relationship and the fact that the tenant's son intended to market the property for his mother. The close family relationship imposes on the tenant the need to provide cogent evidence that the son was acting in good faith and that the offer was a reasonable one in the circumstances. That evidence is absent.

Had either or both offers been proven to be good faith offers, there is still a lack of evidence related to any damage the tenant suffered as a result. The manufactured home has not been sold, either on site or otherwise. There has been no appraisal of the value of the manufactured home on site. It cannot be determined that the tenant has suffered any loss. It may be that after this decision she sells the manufactured home on site for more than either previous offer.

The tenant has not proved her damages. In such a case, having proven a breach of a covenant in her tenancy agreement, she is entitled to nominal damages. Nominal damages are awarded to compensate a claimant, not to punish a respondent. In that regard, I am guided by the decision of Harris J. in *Sabo* v. *Canada (Attorney General)* 2013 YKCA 2,

> More recent cases do not establish a "going rate" for nominal damages, although the Alberta Court of Appeal has said that an award of $5,000 could not be said to be nominal: see, Chohan v. Cadsky, 2009 ABCA 334, 464 A.R. 57 at para. 145. The Ontario Court of Appeal has also suggested that nominal damages should be set at $1: see Place Concorde East Limited Partnership et al. v. Shelter Corp. of Canada Ltd. et al. (2006), 211 O.A.C. 141 at para. 78. The courts in British Columbia have taken a different approach. In Dawydiuk v. Insurance Corporation of British Columbia, 2010 BCCA 353, for example, $1,000 has been awarded as nominal damages. In the circumstances of this case I would award $1,000 as nominal damages.

Other cases involving breach of contract have awarded a similar amount for nominal damages, see for example - *Century 21 Canada Limited Partnership* v*. Rogers Communications Inc*., 2011 BCSC 1196 and *Moon* v*. Pirooz*, 2011 BCSC 782.

I award the tenant $1000.00 for nominal damages.

The tenant has not made a claim for damages for “harassment” in her application or in the “further details of dispute” document filed by her advocate

Even had such a claim been made, the tenant’s evidence of “harassment” for the various alleged incidents beginning with the request for post dated cheques in 2006, I find to be either out of time; outside the two year limitation imposed by the *Limitation Act* of BC or to be vague, lacking substance. They appear to be afterthought, made to emphasis her chief claim regarding the order of possession and the thwarted sales. Little evidence was given about any of them. I find that none of these claims have been proved to be harassment justifying an award of damages.

The tenant also seeks compliance orders. There is no particular request for assignment before me at this hearing and so I cannot order compliance in that regard. Needless to say, the landlords are not now permitted to refuse any assignment of the tenant’s tenancy based on the invalid order of possession they have used in the past. Further, had the question been fairly raised in this proceeding I would likely have held that a landlord cannot deny the existence of a tenancy of twelve years, merely because there is no written agreement, nor can she demand a fixed sum as a “late fee” without some proof of the existence of such a term in the tenancy agreement.

Further, arbitrators under the *Act* have the power to award “aggravated damages.” Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. (see Policy Guideline 16 “Claims in Damages”).

The Guideline states:

> ☐ The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
> ☐ The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.
> ☐ They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

On the facts before me there is the aspect that the landlord acted willfully to pursue the tenant’s eviction knowing the order of possession was of no effect and knowing and

intending to cause the tenant distress. Aggravated damages have not been specifically sought in this application and so I decline to make any finding in that regard.

Conclusion

The tenant's application is allowed in part. I award her $1000.00 as nominal damages. I authorize her to reduce her next rents due until the $1000.00 award has been fully offset. If the tenancy ends before the award has been fully offset, the tenant may apply for a monetary award for any remainder.

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: January 30, 2015

Residential Tenancy Branch