Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKORE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early end to this tenancy and an Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord's two agents, PG and LG (collectively "landlord"), and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions, to call witnesses and to cross-examine each other. "Witness AS" testified on behalf of the landlord and "witness DS" testified on behalf of the tenant at the hearing. Both parties had an opportunity to ask questions and to cross-examine the witnesses.

The landlord testified that the tenant was served personally with the Application for Dispute Resolution hearing notice and written evidence package ("Application") on February 13, 2015. The tenant acknowledged receipt of the Application but was unsure of the date of receipt. The tenant testified that the landlord "shoved" the application notice through his window while he was sleeping and that he received the landlord's written evidence a couple of days later. The landlord's method of service delivery is not one that is allowed under section 82 of the *Act.* Further, the landlord's written evidence was late as per Rule 3.2 of the Residential Tenancy Branch ("RTB") Rules of Procedure, which require the landlord to serve the evidence to the RTB on the same day that the application was made. The RTB received the landlord's written evidence for this application, which was not filed online, on February 13, 2015, one day after the landlord's application was made on February 12, 2014. However, the tenant confirmed that he did receive the landlord's Application and was notified of this hearing. I found the landlord's evidence to be relevant and material to the landlord's application, given

that the landlord's witness AS based his testimony on this written evidence. Based on the sworn testimony of the parties, I find that the tenant received the landlord's Application, including the written evidence, and that there would be no denial of natural justice in proceeding with this hearing and considering the landlord's Application. I find that the landlord's Application is sufficiently served for the purposes of section 71(2)(c) of the *Act*.

The tenant testified that the landlord was served with the tenant's written evidence package, consisting of a one-page handwritten letter and 6 photographs, by leaving a copy in the park manager N's mailbox on February 18, 2015. The landlord testified that he did not receive the tenant's written evidence package, that it was not served at the landlord's address for service and that the evidence was late. Given that the landlord did not receive a copy of the evidence and it was served late on the day before this hearing, despite the tenant having received the landlord's Application around February 13, 2014, I find that the tenant's evidence is inadmissible and I did not consider it in making my decision.

Issues to be Decided

Is the landlord entitled to end this tenancy early and to obtain an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenant testified that this month to month tenancy began approximately 10 years ago. The landlord could not recall when this tenancy began. Monthly rent in the amount of $560.00 is payable on the first day of each month. The tenant occupies a manufactured home which is a trailer. The tenant stated that this trailer is owned by his friend. The landlord stated that the tenant owns the trailer. In any event, both parties confirmed that the tenant does not rent the trailer from the landlord. The tenant rents the manufactured home site ("rental site") from the landlord.

The landlord is seeking an early end to tenancy based on ongoing problems with this tenancy and the emergency nature of the tenant's uncleanliness at the rental site. The landlord stated that the tenant has not cleaned his rental site appropriately, that it smells like garbage and that it appears unsightly. However, the landlord did not provide any photographic evidence to support the landlord's application. The landlord requested an order of possession immediately, indicating that the landlord wishes to clean the tenant's rental site, as per bylaw notices from December 2014.

The landlord testified a 1 Month Notice, dated December 31, 2014 ("1 Month Notice"), was issued to the tenant. The landlord indicated that the 1 Month Notice states an effective vacancy date of January 31, 2015. The landlord stated that the 1 Month Notice was not pursued because the tenant cleaned his rental suite and resolved the issues that were the basis of the 1 Month Notice. The landlord stated that he has not applied for an order of possession for cause, based on the 1 Month Notice, because this is an emergency situation that requires an early end to tenancy.

The landlord stated that a "previous hearing" between the same parties for the same manufactured home site was held before a different arbitrator at the RTB on August 25, 2008. The landlord provided a copy of this "previous hearing decision," dated September 25, 2008. The decision awarded an order of possession in favour of the landlord, effective at 1:00 p.m. on October 31, 2008 ("previous Order of Possession"). The decision discussed City inspections and cleaning concerns regarding the tenant's site. However, the decision was based on a 1 Month Notice and involved other issues including illegal activity, a complaint petition from other occupants, photographic and documentary evidence form the landlord, as well as testimony from 7 witnesses. Both parties stated that the tenant had the previous Order of Possession set aside at the B.C. Supreme Court ("BCSC"). The tenant denied that the landlord had the BCSC decision overturned, as claimed by the landlord. The landlord stated that the previous Order of Possession was never enforced against the tenant out of compassion, as the landlord wanted to provide the tenant with another chance to clean his rental premises and improve his behaviour. The tenant testified that since this previous hearing, he has improved his behaviour and abided by the previous arbitrator's decision and recommendations. The tenant stated that he has avoided socializing with other people and has discontinued his soup kitchen and clothing drive for needy people.

The landlord provided two letters, both dated December 9, 2014, issued by the City to the landlord, regarding bylaw infractions relating to the tenant's rental site. The "first letter" states that the rental site is unsightly. The letter states that there was garbage, shopping carts, scattered litter, refuse, discarded materials and other debris on the property, making the property unsightly. The letter states that the landlord has 14 days to remedy the situation, but the landlord's handwritten notes on the document indicate that "30 days (not 14 days)" was given. The letter indicates that if the situation is not remedied, the landlord will have to pay the City costs for the City to clean the property. The "second letter" indicates that the tenant is residing in a camper van next to his trailer, in contravention of the zoning use for the property. The letter requests that the above action cease by December 23, 2014 and that a follow-up inspection would be done to ensure compliance.

Witness AS testified that he is a City bylaw enforcement officer and that he issued both December 9, 2014 letters to the landlord, as he was not required to provide the tenant with copies. Witness AS confirmed that prior to issuing the letters, he performed a site inspection on December 8, 2014, further to a complaint received by the City regarding the rental site. Witness AS indicated that this inspection was done with his Deputy Chief. Witness AS indicated that he observed the tenant's unsightly rental site, with numerous discarded materials, garbage, and unlicensed vehicles plugged into electrical cords. Witness AS also stated that he noticed the tenant sleeping in the vehicle, contrary to a bylaw, with garbage piled in the vehicle.

Witness AS indicated that his bylaw manager, HG, had a conversation with the tenant on December 18, 2014. Witness AS stated that HG advised the tenant to clean his rental site, offering an extension for this cleaning until the end of the first week of January 2015. Witness AS also stated that he received approximately 30 documents from the tenant, including medical information from the tenant's doctors, regarding the tenant's health. The tenant stated that he is 77 years old and was involved in an accident, causing him to become "crippled". The tenant indicated that he was advised by his doctors to sleep in his van because he is unable to climb the 6 stairs into his trailer, while his van only has 1 step to climb.

Witness AS testified that he completed a further inspection at the rental site two weeks ago, but the landlord did not provide any documentation regarding this inspection. Witness AS stated that he did not know if the tenant was still sleeping in his van, as witness AS banged on the van during the inspection, but did not receive a response. Witness AS indicated that, as of two weeks ago, the tenant's rental site was still unsightly with significant debris, garbage vehicles covered in tarp and discarded items stored at the back of the trailer. However, witness AS noted a small improvement in the cleaning of the rental site.

The landlord stated that he served the tenant with both December 9, 2014 letters from the City. The tenant stated that he only received one letter from the landlord. The landlord indicated that the tenant was given a deadline by the landlord of December 23, 2014, to clean his rental site. Witness AS stated that the tenant was given an extension to the end of the first week of January 2015, to clean his rental site. The tenant and witness DB stated that they have cleaned the rental site as of last week.

The tenant indicated that the rental site was cleaned thoroughly one week before this hearing. The tenant stated that he has resolved all issues in the City's letters, that there is no debris or garbage currently at his rental site, and that he does not keep food for long periods of time. The tenant indicated that there is no garbage smell at his property.

Witness DB testified that she was asked by the tenant to clean his rental site and that the tenant showed her a letter regarding this cleaning. Witness DB stated that she was only given four days' notice about this cleaning but that she had thoroughly cleaned the rental site one week before this hearing. Witness DB stated that she cleaned the tenant's yard, mowed the lawn, cleared the whole left side of the trailer, and loaded a number of items. Witness DB indicated that she still had to complete some cleaning including garbage in the tenant's van.

During the hearing, the landlord walked over to the tenant's rental site to examine the cleaning and admitted that the area was cleaner than before. However, the landlord noted that the rental site was not fully clean and that the lawn had not been mowed as claimed by witness DB. The landlord's main continued complaints relate to garbage in the tenant's van, the tenant sleeping in his van, and the tenant's vehicles covered with tarps.

Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters, and the testimony of the parties and both witnesses, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Section 49 of the Act requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the 30 days indicated on a 1 Month Notice, due to the reasons identified in Section 49(2)(a) **and** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect.

The landlord cited all of the reasons in section 49(2)(a) for ending this tenancy, including:

> *(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…

The landlord stated that this cleanliness issue has been ongoing since 2008. The landlord requested that the previous Order of Possession be reinstated at this hearing. I do not know whether this previous Order of Possession was set aside, as the parties did not provide any documentary evidence to confirm this information. Regardless, the landlord did not pursue any eviction of the tenant after this previous Order of Possession was issued. In any event, the landlord has waived his right to pursue an eviction based on the previous Order of Possession and the previous hearing decision. Almost 6.5 years have passed since that decision was issued and the landlord consciously chose to allow the tenant to remain at the rental site.

The landlord has not acted on the two December 9, 2014 City bylaw letters except to impose deadlines on the tenant to clean his rental site, after which the tenant was given multiple extensions. The landlord waited until February 12, 2015 to file the current Application, which the landlord now claims is an emergency situation, after this issue has been ongoing since 2008. Clearly, as per the landlord's actions, this is not an urgent situation that cannot wait for a 30 day notice to take effect.

The landlord did not provide any medical, documentary, witness or other evidence that other occupants' or the landlord's own health or safety was "seriously jeopardized" by the tenant as per section 49(2)(a)(ii) of the *Act*. The landlord's own witness AS stated that there were no immediate health or safety risks to other occupants of the property but that the tenant had personal mental health issues that needed to be addressed by medical professionals.

I am not satisfied that the landlord has met the onus, on a balance of probabilities, to end this tenancy early based on the reasons in section 56(2)(a) and that it would be "unreasonable" or "unfair," as per section 56(2)(b), for the landlord to wait for a 1 Month Notice to take effect over a thirty day period.

For the reasons outlined above, I dismiss the landlord's claim for an early end to this tenancy and I deny an Order of Possession in this instance.

As the landlord was unsuccessful in this Application, the landlord is not entitled to recover the $50.00 filing fee for the Application from the tenant. The landlord must bear the cost of the $50.00 filing fee.

Conclusion

I dismiss the landlord's claim for an early end to this tenancy and I deny an Order of Possession in this instance.

The landlord is not entitled to recover the $50.00 filing fee for the Application from the tenant. The landlord must bear the cost of the $50.00 filing fee.

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: February 23, 2015

Residential Tenancy Branch