



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0849226 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

The tenants apply to cancel a one month Notice to End Tenancy dated February 25, 2015. The Notice alleges that the tenants have a) engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord, and b) have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenants also seek an order that the landlord provide the with a written tenancy agreement. They also seek monetary relief in the amount of \$448.57 for unspecified reasons.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that there are good grounds for the Notice? Can and should the landlord be compelled to provide a written tenancy agreement? Are the tenants entitled to a monetary award?

Background and Evidence

The manufactured home site is located in an 80 site park in northeastern B.C. The tenants rented a manufactured home on another site in the park for a few months and then, in July 2014, moved their own manufactured home onto the site in question. The rent is \$400.00 per month, due on the first of each month.

There is no written tenancy agreement.

The landlord Mr. C. testified that there were three reasons he gave the Notice in question.

First, he says, the tenants have broken the park rules in three ways. They have an unauthorized cat. They have permitted an animal to run at large in the park and they have pumped water onto the road.

Second, the landlord claims that he is being harassed by the tenant Ms. T.P..

Third, the landlord alleges that he has been threatened by the tenant Mr. T.G.

In regard to the first ground the landlord issued three "Breach of Contract Warning Letter" documents, one for each infraction, all dated February 23, 2015; two days before the Notice to End Tenancy was issued.

The landlord Mr. C. testified that the tenants have permission to have one cat but they've acquired another. The Park Rules, clause 3 "Pets" provides, in part,

Any pet brought into the park without prior approval of the manager and an Edgewood Trailer Park Permit completed – will be asked to remove the pet from the Park and will not be issued a Permit for any pet in the future.

The same clause requires that pets must be kept indoors or contained in a run or fenced area and must be kept on a leash when outside a tenant's home.

The last paragraph of the Pets clause states;

Failure to adhere to these rules will result in a series of written warnings and fines to be paid to the Park. A first offence results in a written warning be issued and a \$25.00 fine. A second offence results in a written warning and a \$50.00 fine and a third offence results in a Notice of Eviction of the animal to the pet owner.

Mr. C. testified that although the Park Rules were not attached to any written tenancy agreement, they had been attached to the residential tenancy agreement the parties entered into when the tenants were renting a manufactured home from the landlord, prior to this manufactured home park tenancy.

Mr. C. alleges that the tenants have made a false report to the police when Ms. T.P. complained that Mr. C. had tried to run her over with a backhoe. He says they called the police another time, when he had shut off their water for maintenance purposes.

Mr. C. raised a number of other issues not related to the Notice. He says the tenants have a stairway that encroaches into the park roadway and that they've laid down concrete patio squares that are directly over a recently laid water line. He says the

tenants used a storage shed without paying and that they won't give him their phone number.

He says that Mr. T.G. shook his fist and threatened him when Mr. C. attended at Mr. T.G.'s workplace to serve documents.

The tenant Ms. T.P. testified that she has never been made aware of park rules.

She says that Mr. C. did try to drive his backhoe into her.

She says that her second cat has been spayed and poses no problems. The landlord has long known she has the cat. She keeps her cats on a leash when outside and if one has escaped it has only been by accident.

She says the stairs are not an encroachment nor are they a problem. The landlord has been aware of them for a long time and said nothing.

Ms. T.P. says that since the landlord laid the new water and sewer lines under the road in front of her manufactured home, the fill in the trench has been subsiding, causing water to pool. She thinks the water is a threat to her manufactured home. On or about February 23, 2015 she connected a small electrical pump to a hose and pumped the water from the low spot in front of the manufactured home out onto the roadway. She says the landlord came, grabbed the pump and threw it onto the roadway.

Ms. T.P. denies threatening or harassing the landlord Mr. C. and says it is just the opposite; he is harassing her.

Mr. T.G. testified that he did not threaten the landlord, though he was upset that Mr. C. would serve him with papers at his workplace. He says the landlord has known of the second cat since October 2014.

Generally, a significant portion of the hearing time was occupied by the parties arguing unrelated issues like whether the stairs encroached, whether they were built to code, whether the water/sewer line trench was properly backfilled or whether the small hills by many sites along the road were snow or were dirt covered with snow.

Analysis

The ending of a tenancy is a very serious matter. Perhaps even more so when it involves a manufactured home, which would require significant effort and expense to relocate.

A landlord alleging cause to terminate a tenancy must provide cogent, persuasive evidence that the tenants have breached one or more articles of s.40(1) of the *Manufactured Home Park Tenancy Act* (the "Act") which lays out a limited list of grounds that will justify eviction of a tenant. It is worth noting that "breach of park rules" is not a permitted ground for eviction under s. 40 of the *Act*.

In this case the landlord has put himself at a distinct disadvantage by failing to secure a written tenancy agreement before permitting the tenants' manufactured home to be placed on the site. Such an agreement would normally include reference to and attach a copy of the park rules. Not infrequently, such an agreement includes a plan showing the boundaries of a manufactured home site.

Section 28 of the *Manufactured Home Park Tenancy Regulation* (the "Regulation") provides;

- 1) Prior to a person's entering into a tenancy agreement with a landlord, the landlord must disclose in writing to that person all rules in effect at the time of his or her entering into the tenancy agreement.
- (2) Subsequent to a tenant's entering into a tenancy agreement with a landlord, the landlord must give notice in writing to that tenant of any rule at least two weeks before the rule becomes effective.

On the competing evidence, the landlord has not demonstrated that he has disclosed in writing the park rules to the tenants. As of the date of the Notice, the tenants were not bound by the park rules.

Even had the tenants been properly notified of the rules, the landlord's claims regarding the cat, the cat at large and pumping water from the puddle shown in the adduced photographs onto the road, are not breaches or infractions so significant as to warrant eviction.

Indeed, the park rule regarding pets inserts its own remedy: two notices with increasing fines and then "eviction" of the pet. If the rules had been in effect for this tenancy, the landlord would be committed to following that procedure, not eviction of the tenants.

Regarding the allegations of harassment and threatening, after considering the competing evidence of the parties, I find that on a balance of probabilities it has not

been proved that the Mr. C. is being harassed by Ms. T.P. or that he has been threatened by Mr. T.G.

Finally, I would note that the first ground claimed in the Notice to End Tenancy is that the tenants have engaged in some form of illegal activity that jeopardized someone's lawful right or interest. There was no evidence of any illegal activity on the part of the tenants.

The second ground in the Notice alleges a failure to remedy a breach of a "material term" of the tenancy agreement that was not corrected within a reasonable time after being given written notice to do so.

A "material term" has been defined in Residential Tenancy Policy Guideline 8 "Unconscionable and Material Terms" as "a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement." Even had the tenants been shown to be in breach of the park rules, the park rules in question could not be said to be "material terms" nor has it been shown that the tenants were given a reasonable opportunity to correct the breaches between the time the February 23rd breach letters were drawn and February 25th, the date the Notice to End Tenancy was issued.

Conclusion

The tenants' application to cancel the Notice to End Tenancy dated February 25, 2015 is allowed. The Notice is cancelled.

The tenants' claim for a monetary award is dismissed for lack of evidence.

The tenants' claim for a written tenancy agreement is dismissed. Only the parties themselves can create such an agreement.

As the tenants have been largely successful, I award them recovery of the \$50.00 filing fee and authorize them to reduce their next rent due by \$50.00 in full satisfaction.

It should be noted that the animosity between Mr. C. and Ms. T.P. was apparent at the hearing. The attitudes they displayed were detrimental to their testimony and are clearly a detriment to their peaceful cohabitation in the park.

I would also note that the setting aside of the Notice is not a determination that the landlord does not have rights, merely that there were no grounds shown serious enough to end the tenancy. Mr. C. and the numbered company are free to seek relief in the nature of compliance orders for less than “material” breaches, encroachments or monetary losses resulting from a breach of the *Act* or tenancy agreement if the circumstances warrant. As well, it is my view that the landlord can give the tenants two weeks’ notice of the park rules pursuant to s.28(2) of the regulation, above, to ensure that they have notice of the park rules and are subject to them in the future.

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: March 31, 2015

Residential Tenancy Branch

