Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1027110 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on April 7, 2015. The Landlord applied for an Order to end this tenancy early, to obtain an Order of Possession, and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and each party was represented. The corporate Landlord was represented by one of the Owners, who identified himself as also being a practicing lawyer, hereinafter referred to as Counsel; and the manufactured home park (the Park) manager, hereinafter referred to as Landlord. Therefore, for the remainder of this decision, terms or references to the Landlord importing the singular shall include the plural and vice versa.

The Tenant was represented by himself and by his assistant / agent, hereinafter referred to as Agent. Therefore, for the remainder of this decision, terms or references to the Tenant importing the singular shall include the plural and vice versa.

At the outset of the hearing the Tenant requested an adjournment for one month, on the grounds that he was released from hospital that morning and his doctor did not want him to have to deal with this issue at this time, due to a head injury. Upon further clarification the Tenant asserted that he had fallen down a sink hole that opened up in a road in the Park. He argued that this event occurred the day before this hearing, on April 26, 2015, and that the fire department arrived and called the ambulance to take him to the hospital. He later stated that he was released from the hospital that same day, April 26, 2015. The Tenant asserted that he had a doctor's note that indicated the matter was to be postponed for at least a month so he could recover from his concussion.

The Agent provided evidence that the Tenant was still wearing the hospital clothing, in support of the Tenant's request for adjournment. She also provided substantial testimony that indicated she had been involved with these matters for some time, in an agent capacity for the Tenant, as well as being a friend and neighbor of the Tenant for several years.

The Landlords submitted that the Landlord would have been called had the fire department received a call to attend the Park as they had his cell phone number on file. Counsel clarified that there had been an issue in the recent past where a flood occurred and after further investigation they determined that there was a plugged culvert. Counsel argued that he attended the Park the morning of this hearing and there was no sign of a sink hole at that time.

Residential Tenancy Branch Rules of Procedure, Rule # 6.4 sets out the criteria for an adjournment as follows:

> *Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:*
>
> *a) the oral or written submissions of the parties;*
> *b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];*
> *c) whether the* adjournment *is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;*
> *d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
> *e) the possible prejudice to each party.*

I considered the contradictory testimony provided by the Tenant when he initially stated that he was released from the hospital the morning of the hearing and after further clarification, he submitted that he did not stay in hospital overnight and was released later on the day of the accident, which was the day before the hearing. Furthermore, the Tenant spoke of having a medical note; however, there was no indication as to why he or his Agent did not request time to submit it into evidence. Upon hearing the Tenant's submission I determined that allowing the adjournment would not provide for anymore fairness of the hearing. I concluded that the Tenant would not be prejudiced if the hearing proceeded as he was being well assisted by his Agent, who appeared to have full knowledge of the events and of the Landlord's evidence. After careful consideration of the Tenant's oral request for adjournment I denied the request and proceeded to hear the merits of the Landlord's application.

The Tenant testified that he had received copies of all of the Landlord's evidence. The Agent confirmed seeing the evidence that had been served upon the Tenant by the Landlord. The Tenant did not submit documentary evidence.

The Landlord testified that he served their evidence to the Tenant on April 7, 2015. He argued that he had discussed the evidence with the Agent and that their discussion included the photographs that were placed on the CD, which were taken in April 2015.

Based on the above, I find the Landlord served their evidence in accordance with the Rules of Procedure, and all relevant evidence received on file prior to the start of this hearing will be considered in my decision.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord met the burden of proof to be granted orders to end this tenancy early and for possession of the manufactured home park site?

Background and Evidence

The undisputed evidence was the Tenant entered into a written tenancy agreement, with the previous owner, to rent a manufactured home park site (the Site) which began on November 7, 2007. Rent of $560.00 is currently payable on the first of each month.

Counsel submitted that the Park used to be owned by the Manager's father and when it was purchased by the limited company at the end of February 2015, they retained the Manager to continue to be an offsite manager, as Agent for the Landlord. The Landlord submitted that he has managed the Park since 1994.

The Landlords submitted that they are seeking to end this tenancy early due to ongoing problems with the condition of the Site, that date back to 2008, and a van that has been parked at the site and has been occupied. They pointed to their documentary evidence which included copies of letters issued by their municipality on March 31, 2015, which speak to the unsightly premises and the van that is occupied at the site.

The Landlords submitted evidence which included, among other things, copies of: an Order of Possession that had been granted to the Landlord on September 25, 2008, which was not enforced; the Park Rules; copies of printed pictures taken in 2008; electronic photographs which were taken in April 2015; a 1 Month Notice to end tenancy issued March 05, 2015; and various written communications regarding this site between 2008 and 2015.

The 1 Month Notice was issued pursuant to Section 40(1) of the Act listing an effective date of April 5, 2015 for the following reasons:

- Tenant or a person permitted on the property by the tenant has:

    - Significantly interfered with or unreasonably disturbed another occupant or the landlord
    - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
    - Put the Landlord's property at significant risk
- Tenant has engaged in illegal activity that has or is likely to
    - Damage the landlord's property
    - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
    - Jeopardize a lawful right or interest of another occupant or the landlord
- Tenant has caused extraordinary damage to the unit/site or property park
- Tenant has not done required repairs of damage to the unit/site

Counsel submitted that when he attended the Park on the morning of this hearing, the van was still parked there, the site was the same appearance, and there were a couple other vehicles present.

Counsel asserted that their evidence that the Tenant has not kept a clean premises, supports their application to end this tenancy early and obtain an Order of Possession without having to wait for the effective date of the 1 Month Notice. Counsel argued that given the reality of the amount of associated materials on the Site can provide health issues due to the attraction of rodents and could be a fire risk if met with an accelerant.

The Tenant argued that all of the photographs submitted by the Landlord were taken in 2008. He continued to question the veracity of the Landlord and pointed to the 2008 Decision as support.

The Agent submitted that she has assisted the Tenant in cleaning up his Site and also argued the Landlord's photographs were all taken in 2008. She stated that there were no problems with rodents.

The Agent submitted that the new owner has recently tried to evict several tenants in the Park because they do not want to buy them out. She submitted that they attended a meeting at the municipality two weeks earlier to discuss the new owner's plans to evict them all and she had heard that the Landlord has bought out other tenants when they gave them papers to move out.

In closing the Agent submitted that the Tenant's Site was one of the cleanest places and argued that the previous Arbitrator did not believe the Landlord back in 2008. She requested that the Landlord's application be denied.

Counsel confirmed that they have explored making applications to the municipality and that they are currently reviewing their ideas. He stated that they are considering their application and considering posting a redevelopment sing but those are not finalized.

Analysis

Section 49 of the *Act* allows a tenancy to be ended early, without waiting for the effective date of a one month Notice to End Tenancy, if the Landlord can prove the high statutory requirement that the tenant(s) have breached their obligations under the tenancy agreement or *Act* **and** it would be unreasonable or unfair to wait for the effective date of a one month Notice to End Tenancy issued under section 40 *[landlord's notice: cause]*

Section 46 of the *Act* stipulates that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, such as the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

In this case a 1 Month Notice to end tenancy was issued March 05, 2015 listing an effective date of April 5, 2015. Upon review of the 1 Month Notice to End Tenancy, I find the effective date of the Notice not to be completed in accordance with the requirements of section 40 of the *Act.* Therefore, the effective date of the Notice automatically corrects to the proper effective date which is **April 30, 2015**, pursuant to section 46 of the *Act.*

Section 26(2) of the *Act* provides that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas.

The Park rules # 11 and #15, provided in evidence, stipulate the number of vehicles, licensed or unlicensed, that may be parked on a "pad", or Site.

Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities, the evidence is that there has been a long history that the Tenant has breached Section 26(2) of the *Act* and #11 and # 15 of the Park rules, as far back as 2008. Despite the Landlord being issued an Order of Possession and a Writ of Possession in 2008, the Writ was not enforced and the tenancy continued. There were written communications and warnings issued to the Tenant since 2008; however, based on the evidence before me, the former owner or Landlord did not seek another Order of Possession from the end of 2008 up to February 2015. The most recent action taken was by the new owner, and long term manager Landlord, was the issuance of the 1 Month Notice date March 05, 2015.

Based on the above, I conclude the Landlord is estopped from evicting the Tenant at this time, with the 1 Month Notice dated March 05, 2015. I make this conclusion in part

because the alleged inappropriate behaviors have been going on, unenforced by the long term manager Landlord, for over a seven year period. It was not until recently that those behaviors became a real issue for the Landlord; which is presumptuously suspicious given that the new owners have been exploring options for redevelopment of the Park property.

Furthermore, there was no evidence before me that would indicate the Tenant knew, or ought to have known that he would be evicted at this time, based on the condition of his site and or the presence of vehicles parked on his site. Accordingly, I Order the 1 Month Notice issued March 5, 2015, cancelled, and it is of no force or effect. Therefore, the Landlord has not met the burden of the first test to end this tenancy early.

In addition, I am not satisfied that the Landlord has met the burden of showing that it would be unreasonable or unfair for a one month Notice to End Tenancy to take effect. I am satisfied that there may be cause to end this tenancy pursuant to section 40 of the *Act*; in the future if the Tenant fails to comply with the *Act* and Park rules. That being said, I do not find it is unfair or unreasonable for a one month Notice to End Tenancy to take effect in these circumstances.

I make this conclusion as there was no evidence that the site was infested with rodents, nor was there evidence that the current condition of the Site posed a health or safety risk. There was speculation that a fire may occur if the Site was exposed to an accelerant; however, that would be the case in any situation if an accelerant meets with most any substance.

Based on the above the Landlord has submitted insufficient evidence to support an application to end a tenancy early and obtain an order of possession.

Conclusion

I HEREBY DISMISS the Landlord's application for an early end of tenancy.

The 1 Month Notice to end tenancy issued for Cause on March 5, 2015, is HEREBY CANCELLED and is of no force or effect.

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: April 29, 2015

Residential Tenancy Branch