



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, DRI, CNR, AS, OPR, MNR, FF, O

Introduction

In the first application, by filing date, the tenants seek to cancel a ten day Notice to End Tenancy for unpaid rent and for an extension of time to do so. She also seeks to cancel a purported rent increase, for compensation for loss of the income from a roommate, for an order that the landlord comply with the *Manufactured Home Park Tenancy Act* (the “Act”) and for an order permitting her to sublet or assigned her tenancy.

In the second application the landlord seeks against the tenant Ms. L.M. a monetary award for unpaid rent and an order of possession pursuant to the ten day Notice.

Issue(s) to be Decided

Who are the tenants? Does the relevant evidence presented at hearing show on a balance of probabilities that the ten day Notice is valid? Does it show that the tenants are entitled to the orders requested or that the landlord is owed rent?

Background and Evidence

The manufactured home site (the “site”) is located in a twenty site manufactured home park. The park was purchased by the landlord in February of this year.

The manufactured home (the “home”) located on the site was purchased on its present site by Ms. L.M. and Ms. E.H. in July 2010 from previous tenants of the park.

Mr. C.C. for the landlord says it did not receive any tenancy agreement from the vendor, the previous landlord, a Ms. S.G. when his company bought the park

The tenant Ms. L.M. produced a document of “Park Rules” that purports to be a tenancy agreement and to be signed by the previous landlord and Ms. L.M. and Ms. E.H. Mr. C.C. says such a document was not in the records received from the previous owner.

Ms. E.H. lived there for a few months after she and Ms. L.M. bought the home. She paid her share of the rent to Ms. L.M. who paid the full rent to the landlord. Ms. E.H. moved away and did not pay rent after that. She has not returned.

Ms. L.M. has been in the habit of renting out a room in the home at a monthly rate of about \$500.00. but her last roommate left in February 2015. She says the landlord wants to approve any new roommate.

Until January 2015 the tenant Ms. L.M. was paying a rent of \$523.00 on a month to month basis. That rent was increased by the former landlord to \$536.00 effective January 1, 2015. That rent increase is not in dispute in this proceeding.

The tenant Ms. L.M. made an agreement dated January 10, 2015 between her as "the proposed Lessee" and Mr. C.C. and Ms. L.A.W. (apparently Mr. C.C.'s partner) "or company to be incorporated by the foregoing" as "the proposed Lessor."

The agreement provided::

WHEREAS the proposed Lessor has an option to acquire the lands legally described as:

(description omitted)

(hereinafter the "Property")

AND WHEREAS the proposed Lessee is presently the owner of a manufactured home located on a leased manufactured home pad on the Property

AND WHEREAS in the interest of securing financing to finalize the acquisition of the Property the proposed Lessor requires that the monthly rent paid by the proposed Lessee be not less than \$625.00 per month:

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and promises contained in this agreement and the sum of One Dollar (\$1.00), the receipt of which is acknowledged by the proposed Lessee:

1. The proposed Lessor and the proposed Lessee agree that in consideration of the proposed Lessee agreeing to pay an adjusted monthly pad rent of \$625.00 per month, commencing on the first day of March 2015, to and including the last day of February 2016, and thereafter a monthly rent of not less than \$625.00 per month, plus an annual rent increase as permitted by Provincial Legislation, the proposed Lessor will grant to the proposed Lessee a Lease for a term of not less than ten years.

2. The Lease will contain provisions for among other things:

- a) the proposed Lessee to transfer or assign its lease to a purchaser of the proposed Lessee's manufactured home subject to the Landlord's approval of the proposed Assignee which approval will not be unreasonably withheld;

- b) the proposed Lessor to relocate the proposed Lessee's rental pad on the Property at the proposed Lessor's expense.
- c) A set of Park Rules dealing with the administrative issues of managing the utilities in the Park and mutual conduct of the proposed Lessee with the other proposed Lessees of the Park.

3. This Agreement shall enure to the benefit of and binding [sic] upon the heirs, executors, administrators, legal and personal representatives, successors and permitted assigns of the parties, as applicable.

4. This Agreement may be executed by the parties and transmitted by fax or email and when it is executed and transmitted, this Agreement will be, for all purposes, as effective as if the parties had delivered an executed original Agreement.

5. This Agreement is governed by the laws of the Province of British Columbia.

6. This Agreement is made under seal.

All three parties signed the agreement.

The tenant Ms. L.M. testifies that at the signing, she and Mr. C.C. agreed that she would do work for him around the park, specifically, collecting rents from other tenants and would continue to pay the \$536.00 rent or otherwise receive money back so that her rent stayed at \$536.00.

Mr. C.C. acknowledged that they had a discussion about ways to make up the difference in rent but denies that he made any agreement that Ms. L.M. would work for him.

Mr. C.C. incorporated the landlord limited company and purchased the park through it in February 2015.

The tenant Ms. L.M. had provided post dated cheque payable to the former landlord in the old rent amount of \$536.00. The landlord returned her March rent cheque (along with the other post dated cheques previously provided) requesting that it be made payable to the new landlord, the limited company and that it be in the new amount of \$625.00.

It appears that the landlord served on the tenant a ten day Notice to End Tenancy as well. The tenant says she took advice from the Residential Tenancy Branch and as a result, paid the full \$625.00 for March rent.

In April, the tenant gave the landlord a cheque in the amount of \$536.00. It was returned and the ten day Notice to End Tenancy in question was issued served on April 2, 2015, claiming \$625.00 unpaid rent.

The tenant again took advice, this time from her advocate's organization, resulting in this application to dispute the Notice. She did not pay the April rent in any amount. She says she tendered rent money of \$536.00 on April 20th and again on May 20th. At least one cheque has been returned to her. Her witness Ms. K.K. confirms she saw the tenant drop off envelopes containing cheques on those dates at the mail slot in the door of the "office" in the park. The cheques have not been cashed.

The tenant's witness Mr. T.B. is a realtor who has been involved with the park over the past two or three years and was a realtor involved in the purchase of the home by Ms. L.M. and Ms. E.H.. He gave some background that provided an explanation for how the January 10, 2015 agreement came to be.

It appears that the previous owner of the park, Ms. S.G. was in the process of trying to sell it as developable property; that is, as property amenable to uses other than as a manufactured home park. One proposed purchaser had offered tenants in the park their choice of condominium opportunities. The tenants in the park were "up in arms" as he describes it. There was a meeting of park residents. They hired a lawyer to help them protect their continued use of the park as a manufactured home park. The idea of the existing tenants creating a cooperative to purchase the park was discussed.

Mr. S.G. testified that "everybody was on pins and needles" that they'd lose the park.

Mr. S.G. also gave evidence in the nature of opinion evidence stating that the ten year lease the tenant Ms. L.M. had entered into was an impediment to the sale on site of her home because a proposed purchaser would be uncertain about his or her tenancy in the park continuing after the expiry of the ten year lease.

Mr. C.C. testified that two friends of his, tenants in the park, had brought to his attention that the park was up for sale and that there was a risk it would be converted from a manufactured home park, requiring the tenants to move their home somewhere else. As a result, he became involved in the purchase of the park for the purpose of seeing that it remained a manufactured home park. He says that in order to purchase the park the rental income from it would have to be at a certain level to justify the financing of the purchase and that a rent of \$625.00 from the twenty sites would be the minimum rent to do so. He says that the tenants of the twenty sites all agreed to the new arrangement, and the new rent, including the tenant Ms. L.M. It was on that basis that he prepared the January 10th agreement for each tenant and negotiated the purchase of the park.

He says that at his meeting with Ms. L.M. on January 10th to sign the agreement, he discussed various ways for Ms. L.M. to cover the difference between new rent and old but he says none involved her being hired in any capacity. He says he would not have offered to hire her to collect rent because the rent is paid directly into the mail slot of the "office" and further, he is trying to shift to electronic payments. There would be no need for Ms. L.M. to collect rent for him.

Analysis

First, I grant the tenant's request for more time to apply to cancel the ten day Notice to End Tenancy for unpaid rent. She was delayed by two days in excess of the five days permitted by s. 39(4) of the *Act* due to an intervening four day weekend during which the Residential Tenancy Branch was closed. The landlord has not show that it would be somehow prejudiced by the delay.

I find that the agreement between the tenant Ms. L.M. as proposed lessee and Mr. C.C. and Ms. L.A.W. as proposed lessors was evidence of a new tenancy agreement and that its operation was subject to the implied condition that the proposed lessors "or company to be incorporated by the foregoing" purchased the park.

I find that the condition has been satisfied by the purchase of the park by the limited company, that the January 10th agreement is binding and in effect and that the landlord the limited company and the tenant Ms. L.M. have a tenancy agreement for a fixed term of ten years commencing March 1, 2015 at a monthly rent of \$625.00.

The background evidence makes it clear that the continuation of the park as a manufactured home park was put in jeopardy by the previous owner's intention to sell the property. The conversion of the park to a use other than as a park was a real likelihood in the minds of the tenants in the park. The involvement of Mr. C.C. and his partner would save that existing use, obviously benefiting long term park tenants and I find that most, if not all park tenants considered the new tenancy agreements as a reasonable method to preserve their sites for more than the one year notice to vacate that they might expect to received under s. 42 of the *Act* from a new owner/developer.

Whether or not the evidence of the realtor is correct regarding a loss of value to the tenant's home resulting from the ten year fixed term tenancy agreement, that issue is a matter that the tenant should properly have considered before agreeing to the ten year term. She cannot raise it now.

The tenant Ms. L.M. is bound by the January 10, 2015 agreement and was obliged to pay a rent of \$625.00 per month on the first of each month commencing March 1, 2015.

The question of whether or not Ms. E.F. was a tenant at some time is now moot. Assuming she and Ms. L.M. were co-tenants of the previous landlord, they shared their rights and obligations jointly and severally. Either could give effective notice to end the tenancy. I find that Ms. L.M. (who represented herself to Mr. C.C. as being the only tenant, both by her silence and by the January 10th agreement) effectively terminated any prior tenancy agreement by entering into the January 10th accord; a new tenancy agreement.

If Ms. E.F. has suffered loss as a result of Ms. L.M.'s actions in ending the old tenancy and creating a new one without her, it is from Ms. L.M. that she must seek relief.

The evidence does not establish that the tenant Ms. L.M. had an enforceable agreement with Mr. C.C. for her to provide work to the landlord in reduction of her rent. The onus of proving a fact lies with the one who asserts it and Ms. L.M. has not provided sufficient evidence at this hearing to establish on a balance of probabilities, in the face of Mr. C.C.'s denial, that she had an arrangement to work for the landlord or otherwise to have her rent stay at \$536.00 per month.

Part 4 of the *Act*, dealing with rent increases, restricts how a landlord may "impose" a rent increase on a tenant. I find that as there was a new tenancy agreement, there was no rent increase "imposed" by the landlord and which a tenant could challenge. The parties agreed to the new rent. It was not imposed. The evidence does not establish that the tenant was misled or somehow tricked into the new tenancy agreement. The application to dispute a rent increase must be dismissed.

The tenant did not pay the \$625.00 rent due April 1, 2015. The landlord acted properly by issuing the ten day Notice to End Tenancy. The tenant did not pay the \$625.00 rent within five days after the Notice. It should be noted that s. 21(2) of the *Act* states that 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.

I find the tenant had no right to deduct any amount from the rent she had agreed to.

The tenant's application to dispute the Notice must fail. As a result of the Notice, this tenancy ended on April 13, 2015, ten days after service of the Notice. As the tenant no longer has a tenancy agreement and thus a legal right to possess the site, the land is entitled to an order of possession and I grant it an order effective on the last day of June 2015.

I find that the landlord is entitled to recover a monetary award for unpaid April rent of \$625.00 and for loss of rental income from the site for May 2015 (as there is no longer an existing tenancy agreement, technically there is no more "rent") in the amount of \$625.00. The tenant may have tendered a lesser amount in April and May. In my view the landlord was entitled to

refuse a cheque for a lesser amount without having a clear understanding from the tenant that a balance was still owing.

If the tenant continues to occupy the site in June and If the parties cannot agree on an amount for use and occupation for that month, the landlord is free to re-apply for loss for that period or for any following period the tenant continues to occupy the site.

Regarding the tenant's desire to rent a room in her home to another person; a roommate, it is my view that the *Act* does not prevent her from doing so and that a landlord cannot interfere (perhaps subject to any lawful discrimination based on age, as allowed by the *Human Rights Code* for parties in "seniors" parks).

A landlord's rights are quite different when a tenant proposes to sublet or assign her tenancy, but that is not the case here. Such cases involve the passing of the tenant's exclusive right to possession of the entire premises, and in the case of the latter, a new person stepping into the shoes of the tenant under an existing tenancy agreement. The *Act* and the *Manufactured Home Park Tenancy Regulation* set out an extensive process for obtaining landlord approval in such cases.

In the case of a mere roommate, who assumes none of the tenant's responsibilities to her landlord, and who does not acquire any right to exclusive possession of the site, there is no apparent risk to the landlord. A landlord in its desired to maintain its view of park standards may want to vet any such person, but in my view, to do so is to interfere with the tenant's right to privacy and to exclusive possession of the site, as granted by s. 22 of the *Act*.

Of course, the conduct of that roommate may justify an eviction of the tenant just as the conduct of a tenant or other occupant might.

It is to be noted that "living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation" is a situation specifically exempted from the operation of the *Residential Tenancy Act* (see. s.4 of that *Act*). It would required some explanation not readily apparent to me why "living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation," should be excluded from the operation of the *Residential Tenancy Act*, yet be within a landlord's power to regulate and control under the *Manufactured Home Park Tenancy Act*.

In light of the foregoing reasons, I do not consider it necessary to make any order requiring the landlord to somehow follow the law regarding any roommate the tenant might find.

In this case the landlord has indicated that it wishes to approve the tenant's roommates and I find that it is not entitled to do so. At the same time, the tenant has not provided evidence upon which I can conclude that she has yet suffered any loss as a result. She has not shown that any

roommate was found or presented or refused and that she suffered a loss as a result. I dismiss her claim for compensation under this item of the claim.

Conclusion

The tenant's application to cancel the ten day Notice, her request for a compliance order and monetary relief is dismissed.

The landlord's claim for an order of possession and monetary award is allowed. There will be an order of possession effective June 30, 2015. I grant the landlord a monetary award of \$1250.00 plus recovery of the \$50.00 filing fee. There will be a monetary order against the tenant Ms. L.M. for the total of \$1300.00.

I urge the parties to negotiate a settlement of this matter that would permit the tenancy to continue thereby avoiding the possibility of significant loss and inconvenience to both sides.

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: May 24, 2015

Residential Tenancy Branch

