



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – O, FF

For the tenants – CNC, CNL, AS, O, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for other issues concerning an Order of Possession and to recover the filing fee from the tenants for the cost of this application. The tenants applied to cancel a One Month Notice to End Tenancy for Cause and a Two Month Notice to End Tenancy for landlord's use of the property; for an Order to assign or sublet the rental unit because the landlord's permission has been unreasonable withheld; other issues and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The parties agreed that a previous hearing had been held on November 26, 2014, the file number for that hearing is included on the front page of this decision. At that hearing the landlord had applied for an Order of Possession for cause for both sites, the tenants applied to

cancel the Notice to End Tenancy for cause on both sites and for an Order allowing the tenants to assign or sublet the sites because the landlord's permission has been unreasonable withheld.

At the previous hearing the parties reached an agreement to settle the matter on the conditions including but not limited to the tenants' agreement to list both of the manufactured homes for sale with a local realtor by February 01, 2015. The landlord agreed to not interfere with prospective purchasers or the realtors. The tenants agreed not to rent either of the homes without the landlord's written permission. The landlord agreed to withdraw the One Month Notices.

On this application the tenants have applied to cancel a One Month Notice to End Tenancy for Cause and a Two Month Notice to End Tenancy for Landlords Use of the Property. I asked the parties if the landlord had issued any Notices to End Tenancy since the last hearing. The parties agreed that no new Notices had been issued or served upon the tenants for either of the sites rented by the tenants. I explained to the tenants that if no new Notices have been served upon them that they do not need to file an application to cancel the Notices. The tenants agreed to withdraw these sections of their application. After the hearing the tenants faxed in a letter stating that they did not want to withdraw their application to cancel the Notices.

When a landlord has not served the tenants with a Notice to End Tenancy under s. 47 or 49 of the *Residential Tenancy Act (Act)* then the tenants do not have a Notice for me to either uphold or cancel. I will therefore not be dealing with these sections of the tenants' application, as without a Notice these sections of the tenants' application have no merit and are therefore dismissed.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Are the tenants entitled to an Order to be allowed to assign or sublet the rental unit?

Background and Evidence

The parties agreed that the tenancy for these two sites began in the summer of 1996. This is a month to month tenancy and the pad rent for these sites is \$275.00 each.

The landlord's application

The landlord testified that the tenants did not comply with the agreement reached between the parties at the previous hearing held in November, 2014. The tenants had agreed to list both manufactured homes for sale with a local realtor by February 01, 2015. The tenants did not do so and to date the manufactured homes are still not up for sale. The landlord testified that due to this breach of the agreement the landlord seeks an Order of Possession effective as soon as possible.

GK testified that they had originally listed the manufactured homes with a realtor in February, 2015; however, they had an extenuating family emergency in January, 2015 when GK's daughter in law went into premature labour and gave birth to their baby on January 20, 2015. The baby was not due until February 10, 2015 and so GK needed to look after her other grandchild while her son and daughter in law were in the hospital with the new baby. GK testified that this delayed them listing the manufactured homes for February 01, 2015.

GK testified that when the first realtor came to the manufactured homes they found out they needed to upgrade the electrical system and obtain an electrical safety certificate before the manufactured homes could be listed. The tenants had to wait to find an electrician in the area and this work has now nearly been completed. The electrical inspector will then come and inspect both manufactured homes and issue the certificates. Meanwhile the tenants have engaged another relator to list the manufactured homes and have signed a contract. The homes can then be listed on MLS as soon as the tenants receive the electrical safety certificate. GK testified that she anticipates that this will happen by the end of June, 2015.

GK testified that due to these unforeseen circumstances, it prevented them from complying with the agreement reached in November, 2014.

The landlord disputed the tenant's testimony. The landlord testified that it has now been five months since they agreed to list the manufactured homes. The first realtor had told the tenants that they needed a CSA certificate. The tenants had put for sale signs up in the window of the

manufactured home but it was not listed for sale. The tenants had plenty of time to get things done and obtain the CSA certificate for both units.

The tenants' application

GK testified that the landlord has also breached the agreement reached in November, 2014 as the landlord has interfered with prospective purchasers and the realtors. The landlord called the tenants while he was sitting with the first realtor and told the tenants that he was discussing the manufactured homes not being listed. The tenant agreed the first realtor had given them some For Sale signs to put in the window but it was not listed at that time and the realtor was just doing it as a favor to the tenants. The tenants later received a call from that realtor asking them to take down the signs because the landlord had spoken to the broker of the company and the broker told the realtor that the tenants were not allowed to have the signs in the window until they had a CSA number. CK testified that there is a law which allows a seller to display signs for up to three weeks but the landlord interfered with the tenants' right to try to sell the homes.

CK testified that she had to take down the signs and listed the homes with a different realtor on May 02, 2015. CK testified that the landlord also interfered with the tenants' second realtor by asking them questions about the tenants' agreement with their electrician.

CK testified that the landlord has also interfered with prospective purchasers who were interested in a private sale and they approached the landlord asking questions about the sites and manufactured homes. The landlord was very opinionated about the condition of the tenants' manufactured homes when it was not his right to give out this confidential information. The landlord exaggerated a leak in one of the homes and made out that there had been a flood when it was only a small leak which has since been repaired. CK referred to letters written by prospective purchasers outlining the conversations they had with the landlord. The tenants seek an extension of time to get the manufactured homes listed for sale.

The tenants seek an Order allowing the tenants to assign or sublet the tenancy. CK testified that it will be easier to sell the units if they have tenants living in them. CK testified that it will be hard enough to sell the homes due to the landlord's interference. CK testified that she has submitted the correct forms to the landlord asking to sublet the site but the landlord is unreasonably withholding his consent. The landlord rents out units on the site and it is discrimination towards

the tenants if he does not allow the tenants to rent out their units while they are being sold. CK testified that she signed an agreement at the start of the tenancy not to rent the units without the permission of the landlord yet the landlord will not give his permission.

The landlord testified that he went to speak to the first realtor to ask if the homes had been listed for sale. It was the realtor who gave the landlord the information that the homes could not be listed without a CSA approval and that the signs had been put in the window of the homes to do the tenants a favor. The landlord testified that due to past problems with renters the landlord does not allow rentals in the park unless the landlord is the owner of the home as he is then on site to deal with any problems. The landlord testified that there have been 11 people living in the tenants' manufactured homes in a year and the tenant has rented the manufactured homes out for the last 10 years. The landlord has a right to know who is living in the homes.

The landlord testified that the tenants knew they needed the CSA certificates before she could sell the homes but did nothing to obtain them past the February 01 deadline. The landlord testified that he has not interfered with prospective purchasers. If people come and ask the landlord if there have been any problems with the homes then the landlord simply tells them the truth and he does not feel he should have to lie to people wanting to buy either of the homes. One of the homes had a grow op in it and this created mould issues which the landlord does not know if the tenants repaired afterwards. With regard to the issue with the leak the tenants referred to; this was actually a flood that occurred over three days and the landlord and a plumber had to get into the home through a window to shut the water off. The landlord testified that the tenant will not tell prospective purchasers about these issues so he has to tell them the truth so it does not come back on him later when they have purchased the homes.

CK testified that she had rented the homes out previously when the landlord's father was the landlord. There have also been caretakers living in the homes who are there to look after the homes and make repairs. The tenant testified that her realtor said they could list the homes in an 'as is' condition and there was also a private sale purchaser interested in the homes.

The tenants call their witness MK. MK is the son of the tenants and testified that he was interested in buying one of the manufactured homes. MK was there with his family on a vacation when the landlord interrupted their stay on two occasions. The landlord approached MK and

asked MK if he was buying the home and has it been listed. He also asked if the electrician had been there and wanted to know who MK was. MK testified that he informed the landlord who he was and that he might be interested in buying the home. The landlord said MK would have to fill in some forms before that could happen. The landlord continued to ask MK about the condition of the home and who his realtor was. MK testified that later on the landlord came back again and asked similar questions and did not appear to remember who MK was.

The landlord testified that he did approach MK but just to assess who was in the unit because he did not know who they were. The landlord disputed questioning MK but he agreed he did ask MK if he was interested in buying the manufactured home. MK informed the landlord that they were just there for the weekend. The landlord testified that the second time he approached MK was when he saw three cars there and needed to know who was at the unit as the landlord has a right to look after the manufactured home park.

EK testified that one of the manufactured homes is assessed at \$38,000.00 however the landlord offered them \$5,000.00 for the home.

The landlord asked EK to explain why the landlord offered the tenants \$5,000.00 for the home and what did the landlord tell them he was going to do with the home. EK testified that the landlord said he was going to take the home to the dump.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regard to the landlord's application; the landlord seeks an Order of Possession because the tenant has not complied with the original agreement to list the homes for sale by February 01, 2015. The landlord has not made application for an Order of Possession because the tenants have breached an agreement with the landlord. Furthermore, the landlord withdrew his application at the previous hearing for an Order of Possession for cause. Without a current Notice to End Tenancy under s. 46, 47, 48, 49 or 49.1 of the *Act* I am not able to issue the landlord with an Order of Possession. The landlord must ensure he checks an appropriate box on the application if the landlord seeks an Order of Possession because the tenants breached an agreement with the landlord as the tenants have a right to understand

what the landlord is applying for on his application. I further find the landlord has equally breached the agreement by interfering with the tenants' realtor and by providing confidential information to prospective purchasers regarding the condition of the manufactured homes. This is not the landlord's place to provide this information even if asked. The landlord should refer questions back to either the tenants or the tenants' realtor.

The landlord is at liberty to serve the tenants with a Notice to End Tenancy under one of the above sections of the *Act* if the tenants have not complied with the *Act*, regulations or tenancy agreement. The landlord's application is therefore dismissed.

With regard to the tenants' application to assign or sublet the manufactured homes; I refer the parties to part 7, s. 48 of the Residential Tenancy regulations which provides reasons the landlord may withhold consent to a request to assign or sublet:

Grounds for withholding consent to a request

48 For the purposes of section 28 (2) of the *Act* [*landlord's consent*], the landlord of the park may withhold consent to assign or sublet only for one or more of the following reasons:

- (a) the request is for consent to assign, and
 - (i) the landlord, on the basis of relevant information, has reasonable grounds to conclude that the purchaser is unlikely to comply with the tenancy agreement or applicable rules, or
 - (ii) the landlord, on the basis of credit information, has reasonable grounds to conclude that the proposed purchaser is unable or unlikely to pay the rent;
- (b) the request is for consent to sublet and the landlord, on the basis of relevant information, has reasonable grounds to conclude that the proposed sublease is likely to result in a breach of the home owner's obligations under the tenancy agreement and rules;
- (c) the request is for consent to sublet and the tenant has agreed in the tenancy agreement not to sublet;

- (d) there is not at least one proposed purchaser or subtenant in a proposed assignment or sublease who meets the age requirement in a park where every manufactured home site is reserved for rental to a tenant who has reached 55 years of age or to 2 or more tenants, at least one of whom has reached 55 years of age, as set out in section 10 (2) (b) (i) of the Human Rights Code *[permitted age requirements]*;
- (e) the proposed purchaser or subtenant does not intend to reside in the manufactured home and
 - (i) intends to use the manufactured home for business purposes, or
 - (ii) has purchased more than one manufactured home in the landlord's manufactured home park;
- (f) the tenancy agreement is a monthly tenancy and the manufactured home has been removed from the manufactured home site or destroyed;
- (g) the landlord, as a result of being unable to contact one or more references provided under section 44 (3) (e), (f) or (g) *[required information]*, has insufficient information to make a decision about the request, if the landlord
 - (i) promptly advised the home owner of his or her inability to contact one or more of those references, and
 - (ii) made every reasonable effort to contact those references and any references provided by the home owner in place of those references;
- (h) the home owner owes the landlord arrears of rent or an amount due under an order of the director;
- (i) the manufactured home does not comply with housing, health and safety standards required by law.

With this regulation in mind the tenants have testified that the landlord has unreasonably withheld his consent. However, the tenants agreed that at this present time the tenants do not yet possess a CSA safety electrical certificate for the manufactured homes. While I accept that

this is pending, it has not yet been obtained and the landlord is therefore entitled to withhold his consent under s. 48(i) of the regulations as the manufactured homes do not currently comply with housing, health and safety standards required by law.

The tenants are at liberty to provide information to the landlord once these safety certificates are in place and complete new forms requesting permission to assign or sublet the manufactured homes. The landlord may not then unreasonably withhold his consent to assign or sublet the manufactured homes if none of the above grounds to withhold consent apply. If the landlord finds one or more of the above grounds do apply the landlord must inform the tenants in writing giving the reason why consent has not been given to assign or sublet the manufactured homes. The tenants' application is therefore dismissed with leave to reapply.

As neither party has been successful with their claim the parties must both bear the cost of filing their own applications.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

The tenants' application is dismissed in its entirety with leave to reapply for the section seeking an Order allowing the tenants to assign or sublet the rental unit because the landlord's permission has been unreasonable withheld.

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: June 08, 2015

Residential Tenancy Branch

