Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MT, DRI & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was sufficiently served on the tenant by mailing on May 14, 2015, by registered mail to where the tenant resides. The Application for Dispute Resolution filed by the Tenant acknowledges receipt of the Notice on June 3, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was sufficiently served by mailing, by registered mail to where the landlord carries on business. The Landlord acknowledged receipt of the same.

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the tenant is entitled to an order for more time to make an application to cancel the one month Notice to End Tenancy dated May 14, 2015?
b. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated May 14, 2015?
c. Whether the tenant is entitled to an order cancelling a 10 day Notice to End Tenancy dated
d. Whether the tenant is entitled to an order disputing an additional rent increase?
e. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The manufactured home park owned is located in a remote area of northern British Columbia. It is used as part of a work camp. The landlord owns two trailers and uses them to house its own employees. Iit rents two pads to the government and three pads to outside parties. The parties testified the present rent is $558.72 plus appropriate taxes.

The trailer which is the subject of these proceedings was originally owned by an employee of the landlord. The collective agreement provided that the landlord could charge $150 for pad rent and $100 for electricity. The electricity is provided by the landlord's generators.

On December 31, 2005 the employee left the employment of the landlord. In January 2006 GP (who works for FSE Ltd.) requested that the tenancy agreement be transferred into the name of his company, FSE Ltd. on behalf of JM (one of the applicants). A tenancy agreement was sent to GP identifying the tenant as FSE Ltd. on behalf of JM and it was returned with the tenant's name JM added to it and signed by JM. FSE Ltd. was not deleted

The representative of the landlord testified it has been unclear as to who owned the mobile home situated on the property. Originally they were lead to believe that it was purchased by FSE Ltd. However, later they were told that it was owned by the applicant CM Corp.

The tenant JM testified that FSE Ltd acted as a facilitator for him as he was often out of the country. It is unclear what that means. On some occasions he testified they were acting as his agent and in other occasions he testified they did not have authority to act on his behalf.

The original tenancy agreement named FSE Ltd as the tenant and provided for a rent of $250 per month payable in advance on the first day of each month commencing March 31, 2006. JM signed it and added his name as a tenant

On or about May 23, 2007 the representative of the landlord e-mailed FSE Ltd. inquiring about the payment of the account and asking whether it was being used by an individual for residential purposes or strictly business use. The employee of FSE Ltd. responded by e-mailed saying the trailer is unoccupied but is used strictly for business.

The representative of the landlord testified she contacted FSE Ltd. to try to determine who owned the trailer and what it was used for. She advised the employee of FSE Ltd. that she had just learned they were using it for business purposes for their flagging operations and housing staff. She stated she was not prepared to enter into a residential tenancy agreement with them but would enter into a commercial/business pad rental beginning June 1, 2007. The rent would be $450 per month. She prepared a letter agreement dated June 4, 2007 which provided rent of $450 per month, garbage disposal of $40 per month commencing June 1, 2007 and it was e-mailed to the FSE Ltd.

The employee stated that she would discuss with her boss. On June 19 the representative of the landlord e-mailed the employee asking if they had signed and returned the agreement. The employee stated she

had not forgotten, the owner is in camp right now, she had e-mailed him the information and was waiting for FSE to sign on his behalf. The employee returned a copy which she signed on behalf of JM dated June 29, 2007.
The applicant JM testified he has no knowledge of this and disputes that the employee had the authority to sign the agreement on his behalf. In any event the increased rent was paid to the landlord and was not questioned by JM or FSE Ltd.

On October 20, 2010 JM telephoned the representative of the landlord and requested that he wished the Pad Rental Agreement be transferred into CM Corporation's name. On the same day the receptionist for the landlord received a telephone call from GP, (the principal of FSE Ltd.) requesting that the invoicing for the Pad Rental Agreement be put into the name of CM Corp.

On October 28, 2010 the landlord received an e-mail from JM which indicated that the legal owner of the trailer is CM Corp. and that he was the actual owner of CM Corp. The landlord subsequently sent a formal lease agreement dated December 1, 2010 that identified the tenant as CM Corp. That document was not signed or returned to the landlord.

In September 2012 the landlord issued a Notice of Rent increase. There were a number of mistakes in the letter and Notice. On January 2, 2013 a letter was sent out identifying the mistake and enclosing a new Notice of Rent Increase. At all material times since then the tenant has been identified as CM Corporation in the Notices of Rent Increases and in the 10 day Notices for non-payment of rent.

The landlord testified that from November 21, 2012 to January 8, 2015 the rent was past due on many occasions. Seven separate 10 day Notices have been issued during that period. The landlord produced evidence of the following late payments made by CM Corporation:

- May 1, 2014 – payment received on June 6, 2014
- June 1, 2014 – payment received June 6, 2014
- July 1, 2014 – payment received September 13, 2014
- August 1, 2014 payment received September 13, 2014
- September 1, 2014 – payment received September 13, 2014
- October 1, 2014 – payment received October 30, 2014
- November 1, 2014 – payment received January 20, 2015
- December 1, 2014 – payment received January 20, 2015.
- January 1, 2015 – payment received January 20, 2015
- May 2015 – unpaid

The rent for May, June, July and August has not been paid. No one has lived in the trailer for the last 2 years.

The landlord testified the tenant has failed to maintain the pad. The trailer has fallen into disrepair. In June 2011 the parties inspected the rental property and it was apparent that it was a resting place for old freezers, motorcycles, lawn mower, oil containers and frees. Garbage is being thrown over the bank next door. The applicants blame the landlord.

Analysis:

The Notice to End Tenancy seeks to end the tenancy on the basis that the tenant is "repeatedly late paying the rent." The tenants do not dispute the late payments referred to above. However, they take the position that the landlord charged an illegal rent increase when the landlord increased the rent from $250 per month to $450 per month in June 2007. The tenant has demanded a reconciliation of the rent increase. The tenant was not able to state how much rent the landlord has overcharged.

The tenant relies on section 36 of the Manufactured Home Park Tenancy Act which provides as follows:

> **"Amount of rent increase**
>
> **36** (1) A landlord may impose a rent increase only up to the amount
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> (a) calculated in accordance with the regulations,
>
> (b) ordered by the director on an application under subsection (3), or
>
> (c) agreed to by the tenant in writing.
>
> (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.
>
> (3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.
>
> (4) [Repealed 2006-35-11.]
>
> (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase."

The landlord submits that it has not imposed an illegal rent increase as applicant JM agreed to the increase through its agent FSE Ltd. Further, this is in essence a business/commercial lease and therefore the rent increase provision under the Manufactured Home Park Tenancy Act do not apply.

This is a difficult case. I determined that in 2007 the landlord entered into a tenancy agreement with FSE Ltd. and JM. Both entities were tenants. However, I find that in October 2010, at the request of the FSE

Ltd. and JM, a new tenancy agreement was entered into in which the sole tenant was CM Corp. I based this determination on the following evidence:

- I am satisfied that the applicant JM requested this change be made and the landlord complied.
- In 2010 the landlord sent a formal tenancy agreement which was not signed by the applicants. While I accept the testimony of JM that he, on behalf of CM Corp did not agree with many of the terms contained in the lease. However, I do not accept his testimony if he is saying he did not want CM Corp. to be the tenant.
- The documentation of the parties is not satisfactory. In some situations documents were sent out in error. In other cases names were inadvertently left in documents. However, from 2012 onwards the documentation indicates that the landlord was dealing only with CM Corp as tenant.
- CM Corp. was billed as per the instructions of the applicant and it is identified as the tenant in the Notices of Rent Increase and Notices to End Tenancy.
- I determined the request of JM to change the tenant was not made out of ignorance. JM is the director of a number of corporations. He is not an unsophisticated tenant.

Section 53(1) of the Manufactured Home Park Tenancy Act provides

> **Latest time application for dispute resolution can be made**
>
> **53** (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.
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> (2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).
>
> (3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

The applicants allege the landlord illegally increased the rent in 2007. The tenants under that tenancy agreement were FSE Ltd. and JM. That tenancy came to an end at the request of the tenants in late 2010. The tenants had 2 years from that date to file an application for an illegal rent increase. I find that there claim is barred.

In late 2010 the landlord entered into an oral tenancy agreement with CM Corp. The landlord attempted to put it in writing. However, the tenant did not sign or return to the landlord. While the landlord cannot rely on the terms of that written agreement I am satisfied that parties orally agreed to a new tenancy with CM Corp only as the tenant. The previous tenants including JM are not tenants in this new agreement.

I find that the tenant C M Corp. is repeatedly late paying the rent as it has been late on at least 9 occasions in the last 2 years. The Policy Guidelines provides 3 late payments is sufficient for a determination of repeatedly late payment of rent.

Summary:

I dismissed the claims brought by JM as I determined his tenancy came to an end in late 2010 and any claims he might have is barred by his failure to bring his claim within 2 years of the end of the tenancy.
I dismissed the claim of the tenants that the landlord has illegally increased the rent as I determined there has been no illegal rent increase involving CM Corp. .
I ordered that the application of the tenant to cancel the one month Notice to End Tenancy be dismissed without liberty to re-apply.
I dismissed the claim of the tenant for the cost of the filing fee.

Order for Possession:

The Manufactured Home Park Tenancy Act provides that where a landlord has made an oral request for an Order for Possession at a hearing where a dispute resolution officer has dismissed a tenant's application to set aside a Notice to End Tenancy, the dispute resolution officer must grant an Order for Possession. The landlord made this request at the hearing. As a result I granted the landlord an Order for Possession. The manufactured home pad is in a remote area of northern BC and is difficult to access. I set the effective date of the Order for Possession for September 30, 2015 given the difficulty of access.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: August 23, 2015