



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Preliminary Issues

The parties confirmed that these matters related to a manufactured home park operated by the two named respondents listed on the Tenant's application. Accordingly, the style of cause was amended to include the manufactured home park's name, in accordance with section 64 (3)(c) of the *Act*.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on July 17, 2015, seeking to cancel or set aside a 1 Month Notice to end tenancy issued for cause and to recover the cost of the filing fee from the Tenants for this application.

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.

The hearing was conducted via teleconference and was attended by one Landlord, P.D. and the Tenant. P.D. affirmed that she would be represented herself and H.D. in this matter. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

The Tenant gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served the Landlords in their first submission of evidence. A detailed review was conducted with the Landlord who confirmed receipt of the same documents from the Tenant.

The Tenant submitted that he did not serve the Landlord copies of his last evidence submission which consisted of the three page document titled Rules and Regulations. He argued that the Landlords already had a copy of the Rules and Regulations so he did not see a need to serve them another copy. The Landlord was given an opportunity to respond to the Tenant's submission during which no issues were raised regarding the

lack of service or receipt of the Rules and Regulations as evidence. Rather, the Landlord confirmed that she had her own copy of the Rules and Regulations.

Issue(s) to be Decided

1. Has a valid 1 Month Notice to end tenancy been issued and service upon the Tenant in accordance with the *Manufactured Home Park Tenancy Act*?
2. Should the 1 Month Notice issued June 26, 2015 be upheld or cancelled?

Background and Evidence

The undisputed evidence is that the parties entered into a verbal tenancy agreement under the *Manufactured Home Park Tenancy Act* which began in December 2014. Rent of \$250.00 is due on or before on the 1st day of each month.

The Tenant submitted a copy of the Park Rules and Regulations into evidence which he confirmed receiving prior to the start of his tenancy. He argued that he did not receive the Rules and Regulations from his Landlords, rather he received them from his realtor at the time he purchased the manufactured home.

The Landlord testified and confirmed that the Park Rules and Regulations consisted of the typed eleven (11) rules plus the one hand written rule listed on the three page document. She submitted that the Tenant broke the rules when he had his boat parked at his Site. When the Tenant refused to move his boat they served him with a 4 page Notice to end tenancy.

A review was conducted of the 4 page Notice submitted into evidence and which was served upon the Tenant. The Landlord read the first sentence written on the Notice into evidence as follows: "This form is used by a landlord to end a residential tenancy". It was noted that this Notice was produced in March 1999 and did not require an issue date or the landlord's signature.

Prior to conclusion of the hearing each party was given the opportunity to ask questions. The Tenant requested that the Landlord be told what a material term of a tenancy agreement was and the ramifications of a breach of a material term. I advised the parties that I would include information about material terms at the end of this Decision.

The Landlord requested that the Decision also include information on what the *Manufactured Home Park Tenancy Act* provides regarding a breach of Park rules and regulations.

I suggested that each party take the time to learn what their rights and obligations were under the *Manufactured Home Park Tenancy Act* and directed them to the RTB contact information listed on the Notice of Hearing document.

Analysis

The *Manufactured Home Park Tenancy Act* (the *Act*), and the *Regulation* stipulate provisions relating to these matters as follows:

Regarding the Tenancy

Section 1 of the *Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities.

Section 84 of the *Act* stipulates that except as modified or varied under this *Act*, the common law respecting landlords and tenants applies in British Columbia.

Regarding Park Rules

Section 32(1) of the *Act* provides in part that in accordance with the regulations, the landlord may establish, change or repeal rules for governing the operation of the manufactured home park.

Section 29(1) of the *Regulation* stipulates that 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.

Section 30(3) of the *Regulations* provides that a rule established, or the effect of a change or repeal of a rule changed or repealed, pursuant to subsection (1) is enforceable against a tenant only if

- (a) the rule applies to all tenants in a fair manner,
- (b) the rule is clear enough that a reasonable tenant can understand how to comply with the rule,
- (c) notice of the rule is given to the tenant in accordance with section 29 [disclosure], and
- (d) the rule does not change a material term of the tenancy agreement.

Regarding the Notice

Section 40(1)(g) of the *Act* provides, in part, that a landlord may end a tenancy by giving notice to end the tenancy if the tenant:

- (i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Section 40(3) of the *Act* stipulates that a notice under this section must comply with section 45 *[form and content of notice to end tenancy]*.

Section 45 of the *Act* stipulates that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the manufactured home site,
- (c) state the effective date of the notice,
- (d) except for a notice under section 38 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Regarding the Filing Fee

Section 65(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 52 (2) (c) *[starting proceedings]* or 72 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

Section 65(2) of the *Act* provides that the director orders a landlord to pay an amount to a tenant, including an amount under subsection (1), the amount may be deducted from any rent due to the landlord.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Common law has established that oral contracts and/or agreements are enforceable. The undisputed evidence is the parties had a verbal tenancy agreement beginning in December 2015 for the monthly rent of \$250.00 along with a 3 page written document titled "Rules and Regulations." Therefore, based on the above, I find that the terms of this verbal tenancy agreement and the written Park Rules and Regulations are recognized and enforceable under the *Manufactured Home Park Tenancy Act*, pursuant to sections 1, 32, and 88 of the *Act*.

The undisputed evidence is the Tenant received a copy of the written Park Rules and Regulations from his Realtor at the time he purchased the manufactured home. Accordingly, I find the Park Rules have been received by the Tenant in accordance with

the *Regulations*, and those Rules and Regulations are in full force and effect, pursuant to section 32(1) of the *Act* and 30(3) of the *Regulations*.

Upon review of the 1 Month Notice to end tenancy issued June 26, 2015, I find that the Notice does not meet the form and content required pursuant to section 45 of the *Act*. Specifically, this Notice is not dated or signed by the Landlord, it does not list an effective date, and it was issued on an outdated form that relates to tenancy agreements governed under the *Residential Tenancy Act* and not the *Manufactured Home Park Tenancy Act*. In addition there is no mention of the *Manufactured Home Park Tenancy Act* or the relevant sections of that *Act* on this Notice

Based on the foregoing, I find there was sufficient evidence to cancel the Notice to end tenancy issued June 26, 2015; therefore, I grant the Tenant's application.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 65(1) of the *Act*.

Conclusion

The Tenant was successful with his application, the Notice to end tenancy was canceled, and the Tenant was awarded recovery of his \$50.00 filing fee.

The Notice ending tenancy issued for Cause on June 26, 2015, is cancelled and is of no force and effect.

The Tenant may choose to recover the one time award of \$50.00 from a future rent payment, pursuant to section 65(2) of the *Act* or the may seek payment of the \$50.00 award from the Landlord. The Tenant has been issued a Monetary Order for **\$50.00**. This Order is legally binding and must be served upon the Landlords.

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: September 28, 2015

Residential Tenancy Branch

MATERIAL TERMS

Residential Tenancy Branch Policy Guideline 8 defines a material term, in part, as follows:

A material term is 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.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

[Reproduced as written]

Case law provides that a material term is a term written into the tenancy agreement or park rules that the parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

