



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREEN BAY LANDING INC.
tenant name suppressed to protect privacy]

DECISION

Dispute Codes cnc, ff, o, olc, psf

Introduction

The tenants apply for resolution of a dispute in the tenancy at the above noted address, and request several orders, including the cancelling of a One Month Notice to End Tenancy, which alleges that:

- the tenant or a person permitted on the residential property has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- there is a breach of a material term of the tenancy agreement that was not corrected within a reasonable times after written notice to do so.

The tenants have other claims as well, but confirmed at the start of the hearing, that the key issue to be addressed was the request to cancel the One Month Notice to End Tenancy.

Rule 1.1 of the Rules of Procedure states that the objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes.

Rule 2.3 provides that claims made in the application must be related to each other, and that Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. In this case, the various claims of the tenants are not all related to each other, and I determined that the foundational issue was whether or not the tenancy would end, or whether the Notice to End Tenancy would be cancelled and the tenancy continue. Any remaining issues are all dismissed as unrelated, with liberty granted to reapply.

Issue(s) to be decided:

Should the Notice to End Tenancy be cancelled, or has the landlord established grounds to end this tenancy?

Background and Evidence

I am not provided with a copy of the written tenancy agreement, but I accept the oral testimony that this tenancy began on April 1, 2003, when it was owned by a previous landlord. The present landlord purchased the Park in 2004. Current pad rent is \$467.25, due on the first day of each month. The tenants own the manufactured home

on the pad. The home and pad are currently let by the tenants to sub-tenants. There have been several sub-tenancies, beginning 2006.

What follows is the relevant evidence dealing with the current dispute.

A feature of the Park is a canal that was dug in about 1960, for the express purpose of granting tenants in the Park access to Okanagan Lake. The tenants have constructed a dock on the canal, and have moored a boat there for many years, although the landlord seems unaware of this.

On July 20, 2015, the landlord's park manager directed the tenants to remove their boat from the canal, advising them that they had no right to access the Park's waterway, and they were in breach of Park rules. The tenants disregarded the direction, moored their boat at Site 16A, and drove off.

On August 1, 2015, a written notice was given to the tenants to cease and desist in their disregard of Park Rules, and to remove their boat by August 7, 2015. The tenants were advised that failure to remove the boat would result in further action, including the issuance of a Notice to End Tenancy. The tenants did not remove their boat, and on August 20, 2015, they were served with the Notice.

The landlord submits that each tenant has access to the canal, and the bank along each respective rented pad is considered part of the rented property. The landlord submits that the Park Rules prohibit a non-resident of the Park from mooring a boat in the canal, and since the tenants do not reside in the Park, they are prohibited from mooring their boat there. The landlord contends that the violation is a breach of a Park Rule, and of a material term of the tenancy agreement. The landlord alleges the sub-tenants are subject to the current park Rules, but that the tenants forced their sub-tenants to sign a release permitting them to moor their boat.

The tenants advise that their original tenancy agreement had no restrictions on the mooring of boats in the canal, but it was understood that the access to the lake by way of the canal was a key feature of the tenancy. The tenants acknowledge that their sub-tenants are subject to the Park Rules, since these Rules were in place and were provided to the sub-tenants as part of their tenancy. Any right of the sub-tenants to moor a boat along the canal is subject to the conditions within the Park Rules. More significantly, the tenants submit that the Park Rules in fact permit the tenants to moor a boat, even though they have sublet the pad. The relevant Rule is found in section 6, and reads: "Mooring at each site is restricted to owner or tenant only. No non-resident mooring allowed." The tenants contend that since they are both a tenant and an owner of the manufactured home, the Rule therefore allows them mooring privilege.

The landlord counters that the tenants do not reside at the subject pad, and have sublet their pad. As they are non-residents, the Rules prohibit them from mooring at the site.

The tenants suggest that it is unreasonable and unconscionable that guests and visitors of tenants be restricted from use of the canal and moorage. The landlord replies that visitors and guests are non-residents, but that they are they are not prohibited from mooring their boats.

Analysis

My decision is made somewhat more difficult by the fact I am not provided with a copy of the tenants' original tenancy agreement (which apparently included some Park rules) or a copy of the sub-tenancy agreement.

Given that the sub-tenancy of the pad was made after the Park Rules were instituted by the current landlord, and became an inherent part of the sub-tenancy, it follows that the tenants have accepted these rules as applicable to their head tenancy. More generally, Park Rules are a common feature of any Manufactured Home Park, and are governed by part 4 of the Manufactured Home Park Tenancy Regulation. Among other important aspects of the Regulation, a Park Rule cannot change a material term of the tenancy agreement.

In the present case, the landlord contends that the tenants have breached a material term of their agreement, namely: "Mooring at each site is restricted to owner or tenant only. No non-resident mooring allowed." There are several issues to address in order. Firstly, have the tenants in fact contravened the Park Rule? Secondly, if so, is the Rule a material term of the tenancy agreement? Thirdly, if so, were the tenants provided a reasonable time after notice to correct the breach?

The tenants argue they are not in breach of the subject Park Rule, as they are both owners and tenants, and either qualification is sufficient to permit them moorage. The landlord responds that non-residents are prohibited, and the tenants are non-residents.

Both parties are correct in a way, demonstrating that the Rule itself is confusing and inadequately worded. The tenants are in fact owners of the manufactured home, and they are also tenants of the landlord. Logic dictates that is not possible for owners to reside in the Park unless they are also tenants. If the first Rule was intended to apply only to resident tenants (but not to owners) there would be no reference at all in the Rule to owners. The only reasonable explanation for the inclusion of owners as being entitled to moor boats, is if the owners were not tenants (and therefore not residents). The subsequent exclusion of non-residents is therefore clearly contradictory to the right of non-resident owners to moorage. To confuse the issue even more, the landlord submits that guests or visitors may moor boats, even though they are not residents. This latter position of the landlord indicates the Rule is not enforced even-handedly, and that some non-residents have moorage rights while others do not.

Given the confused nature of the Rule, the legal principle of *contra proferendum* applies in this case. Under this legal principle, when a contractual term is demonstrated to be vague, confusing, or subject to more than one interpretation, the uncertainty must be interpreted against the party that drafted the document. As the Rule was instituted by

the landlord, the benefit of the doubt must favour the tenants in this case. The Rule as written cannot be enforced as against the tenants, given that one reasonable interpretation of the Rule is that owners who are not tenants (and therefore non-residents) are nevertheless permitted the right of moorage.

The subject Park Rule has therefore not been proven to have been breached by the tenants, and no material term has been proven to have been breached. No lawful right has been proven to have been seriously jeopardized by the tenants. I therefore order that the subject Notice to End Tenancy be cancelled, and the tenancy shall continue.

Conclusion

The subject Notice to End Tenancy is cancelled. The tenancy continues. As the tenants are successful in this claim they may recover their \$50.00 filing fee from the landlord. Should the landlord not pay this sum to the tenants, they are at liberty to deduct this sum from a future monthly rental payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 09, 2015

Residential Tenancy Branch

