



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Crystal River Court Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MT, CNC, MNDC, OLC, O, FF

Introduction

This hearing was the result of a Review Decision dated November 4, 2015.

Both parties appeared. The tenants were represented by the male tenant's brother, a retired lawyer.

The tenants had filed some late evidence at a Service BC office on January 7, 2015. It was not received by the Residential Tenancy Branch until January 12 and had not made its way to my desk by the hearing. The landlord acknowledged receipt of the late evidence. The tenants said they had prepared this evidence package after receiving the landlords' in order to respond to some of the allegations made in that submission. They advised that the photographs and written submissions were intended to show that the landlords' photographs were not accurate, and to respond to some of the points made in the landlord's submission. The tenants' advocate acknowledged that the late evidence was not really germane to the issue of the timelines. I ruled that I would not accept the late evidence.

Issue(s) to be Decided

What changes, if any, should be made to the timelines imposed in the decision of September 17, 2015?

Background and Evidence

This hearing was the result of a Review Decision dated November 4, 2015. The original hearing was on September 16, 2015, and dealt with the landlords' application for an order of possession based upon a 1 Month Notice to End Tenancy for Cause and the tenants' application for orders setting aside the notice to end tenancy; granting them more time in which to make that application; compelling the landlord to comply with the Act, regulation or tenancy agreement; and granting the tenants a monetary order. The parties filed detailed evidence and submissions before that hearing and according to the records of the Residential Tenancy Branch the hearing last an hour.

In a decision dated September 17, 2015, the arbitrator found that:” . . .the landlords’ 1 Month Notice to End Tenancy for Cause was issued prematurely. I therefore order the Notice to be cancelled.”

The arbitrator also decided as follows:

“As such, I find that the tenancy agreement, Addendum and Park Rules do provide obligations on the part of the tenants should they wish to make alterations to the pad site. One such obligation is that the tenants are required to obtain approval from the landlord for any of the alterations made. It is clear from the evidence and testimony of both parties that the tenants failed to obtain the landlord’s approval for the changes already made.

As a result, I make the following orders:

- **I order** the tenants must complete the repairs as outlined in Addendum 1 of the tenancy agreement no later than October 31, 2015;
- **I order** that the tenants must request from the landlord approval for the current site design no later than October 15, 2015;
- **I order** that the landlord **may** require the tenants to redo any of the portions of their landscaping that is already completed to ensure it complies with the requirements outlined in the tenancy agreement and Park Rules agreed to by the tenants at the start of the tenancy;
- **I order** that if the landlord requires the tenants to make modifications he must provide written approval for areas approved and clear instructions to the tenants for any required modifications; and
- **I order** that if the landlord does require the tenants to make any modifications the tenants must comply within 30 days of receiving the landlord’s written instructions for the modifications or to any mutually agreed upon deadlines. Any mutually agreed upon deadlines must be in writing.

If the tenants fail to comply with the above orders the landlord would be at liberty to issue a new 1 Month Notice to End Tenancy for Cause under Section 47(1)(l) which states: A landlord may end a tenancy by giving notice to end the tenancy if the tenant has not complied with orders of the director within the dates specified in the orders for the tenant to comply.”

The tenants applied for a review of the decision. The arbitrator who decided the review application made the following order:

“Therefore, **I ORDER** that the Orders made with respect to a timeline of the completion of repairs, approval of landscaping site design, and modifications,

and contained in the Decision dated September 17, 2105 are suspended until a review hearing has been completed.

The review hearing will be a new hearing of issues relating to the timeline for completion of repairs, approval of landscaping site design, and modifications.

. . .

I note that the Landlords' application for an Order of Possession remains dismissed, and the Notice remains cancelled and will not be considered in the Tenants' review hearing."

At the beginning of the hearing the tenants' advocate acknowledged that the Review Decision was very clear that the review hearing was about the timelines set out in the original decision only.

The tenants and their advocate then gave testimony and made submissions intended to prove the following points:

- They had been misled by the landlord when they entered into the tenancy agreement and basically tricked into signing a tenancy agreement that obliged them to make certain repairs.
- The repairs have already completed and, in fact, were completed before they bought the manufactured home.
- The landlords knew they were doing all this work and not objected. They tenants did acknowledge that they did not ask for permission in advance.
- The landlord only objected to their landscaping after they wrote letters of complaint about cats roaming freely within the park.
- The rules are not being enforced uniformly and, in particular, some of the properties owned and maintained by the landlords are unsightly.

The landlord denied these allegations and gave his version of events around the signing the tenancy agreement.

On the topic of timelines the tenants stated that they should be able to start work on the yard in March and be able to complete the work in April.

The landlord said he was in agreement with this timeline. He would like the gravel and rocks removed and soil replaced in March and the grass planted thereafter.

With regard to the repairs the landlords' position is that the repairs have not been done. He asked that they be completed after the landscaping and, in any event, to be completed by the end of April.

The tenants advised that they are trying to sell their home and asked that this be taken into consideration. In their evidence they also referenced their age and some of their health issues.

Analysis

As this review hearing was limited to the issue of timelines only I have no jurisdiction to decide whether the tenancy agreement and the obligations imposed by that agreement are valid. That issue was heard and decided in the original dispute resolution proceeding and that finding was not overturned on review.

Similarly, I do not have the jurisdiction to determine whether the repairs listed in the tenancy agreement have been completed or not. This will be an issue to be decided by an arbitrator if the landlord decides to serve the tenants with a 1 Month Notice to End Tenancy for Cause based upon his contention that the repairs have not been made and the tenants decide to dispute the notice.

I find that:

- The tenants did request approval from the landlord for the current site design no later than October 15, 2015.
- The landlord did require the tenants to redo portions of their landscaping that is already completed to ensure it complies with the requirements outlined in the tenancy agreement and Park Rules agreed to by the tenants at the start of the tenancy.
- The landlord has provided the tenants with written approval for any areas approved and given clear instruction to the tenants for any required modifications in his letter and attachment of October 15, 2015.

Having heard and considered the representations of the parties I amend the decision of September 17, 2015 as follows:

- **I order** the tenants to implement the modifications to the site as set out in the landlord's letter and attachment of October 15, 2015 by **April 30, 2016**. If the parties agree to a different deadline that agreement must be in writing to be enforceable.
- **I order** the tenants to complete the repairs as outlined in Addendum 1 of the tenancy agreement no later than **June 30, 2016**.

In all other respects the decision of September 17, 2015 remains in full force and effect.

Conclusion

An order amending the deadlines imposed in the decision dated September 17, 2015 has been made.

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: January 19, 2016

Residential Tenancy Branch

