



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0849226 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord's Application: OPC, OPB, FF

Tenants' Application: CNC, AS, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenants. The tenants applied to cancel a one month Notice to End Tenancy for cause and for approval of a sublet. The landlord applied for an order for possession. The matters were originally scheduled to be heard by conference call on October 20, 2015. For the reasons set out in an interim decision dated November 4, 2015 the hearing was adjourned and rescheduled to be heard on January 22, 2016. Due to technical problems with the conference call system on January 22, 2016 the parties were unable to call in and participate in the conference call hearing. The matter was rescheduled to be heard on January 29, 2016.

Issue(s) to be Decided

Should the one month Notice to End Tenancy for cause dated July 31, 2015 be cancelled?

Background and Evidence

The rental unit is a manufactured home site in the landlord's manufactured home park. The trailer on the site is owned by the estate of the deceased owner. It is currently occupied by the former owners' son, Mr. J.F. There is a tenancy agreement between the landlord and the deceased owner, M.F. The agreement is dated May 1, 2009. The tenancy began July 1, 2019. Pad rent is \$325.00, payable on the first of each month. There is a form of tenancy agreement between the estate of the deceased owner and J.F. The agreement was to commence on January 1, 2016 although it was signed on signed on January 31, 2015 and February 3, 2015. The agreed was stated to be a

manufactured home site tenancy agreement although it is intended to be an agreement for the occupancy of the trailer now owned by the estate and as such is a actually residential tenancy agreement. According to the evidence presented by the parties, J.F. moved into the trailer approximately five years ago.

There was a previous dispute resolution hearing regarding this tenancy. The landlord applied for an early end of tenancy and a hearing was held on September 25, 2015. By decision dated September 28, 2015 the arbitrator noted that a hearing was scheduled to address a one month Notice to End Tenancy for cause. She found that the landlord had not established that it would be unreasonable or unfair to wait for the Notice to End Tenancy to take effect and therefore dismissed the application for an early end of tenancy.

The Notice to End Tenancy given by the landlord was dated July 31, 2015. It was personally served upon a representative of the estate. There was an issue raised as to whether the appropriate party was served with the Notice to End Tenancy, but the tenant applied to dispute the Notice to End Tenancy on August 19, 2015 and I find that the Notice to End Tenancy has been sufficiently served upon the tenant. On August 27, 2015 the landlord submitted its own application seeking an order for possession

The Notice to End Tenancy claimed that the tenant has allowed an unreasonable number of occupant in the unit/site, that the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and that the tenant has assigned or sublet the rental unit or site without the landlord's consent.

The landlord's representative testified with respect to the grounds for the Notice to End Tenancy. The Notice was given because J.F. son of the deceased owner, as well as another man, Mr. C.M. have been living in the trailer. The landlord's representative testified that J.F. has an ongoing problem with alcohol and drug abuse. The landlord said that J.F. and his guests or invitees have disturbed and upset other occupants of the park with fights and loud, altercations. The landlord's representative testified that the police have attended at the park on several occasions to deal with problems caused by J.F. The landlord submitted a statement from an occupant of the home park who reported that on June 18, 2015 at approximately 2:00 A.M. he was awakened by a disturbance between J.F., his acquaintance, K.M. and a female. The disturbance involved much yelling, swearing and threatening remarks and continued for several hours. The neighbour said that this only one incident of many involving yelling, foul language and threats. The police attended to deal with the disturbance on June 18th. Ms. J.D. a resident of the home park submitted a written statement. She complained about an incident on the afternoon of August 15, 2015 when J.F. came out of the trailer

he occupies to yell at her. He asked them if they intended to call the cops every time people walk by. She found the tenant's comments and behaviour to be bullying.

Another resident complained that in early August, 2015 a guest of J.F. left J.F.'s trailer, got into his truck and drove out of the park. He was driving erratically and at high speed, spinning his tires and throwing up rocks from the gravel at the resident and her children. She said there are small children in the park this erratic driving put them at risk.

Another resident, M.L. provided a written statement and testified at the hearing. She lives across the street from the J.F.'s trailer. She said that J.F. has repeatedly complained that she is spying on him when she looks out of her front window that faces his residence. She testified that J.F. has accused her of complaining to the park management about his behaviour. She testified that he has threatened to harm her if he finds out that she has made any complaints. She said that there J.F. and the occupant of another trailer have been involved in incidents and disputes over the use of illegal drugs. Ms. M.L. testified that on August 6, 2015 at 1:00 A.M. J.F. and his friend, visibly impaired were at her house peering into her front window. M.L. has reported her concerns to the police.

The landlord submitted copies of warning letters issued with respect to J.F.'s conduct and use of the rental property. They included warnings for late night disturbances, allowing unauthorized people to reside in the trailer and lighting a fire when a province wide ban was in force.

The landlord's representative testified that J.F. has an extensive criminal record and there are outstanding charges relating to uttering threats. He referred to a statement by A.S. who left the trailer park because of threats and intimidation by J.F. She said that In June, 2015 J.F. and his friend were intoxicated and demanded to use her car. When she refused, J.F. began to threaten her. She said that he has entered her house without permission when he has been drunk or high on drugs. She moved out of the park because she was frightened of him and considered him to be dangerous and she felt it was unsafe for herself and her children because he is usually drunk and using drugs.

The respondents submitted that the respondent was improperly named in the Notice to End Tenancy as the "Estate" of the deceased tenant, when it is properly "S.F. Administrator of the Estate". The respondent submitted that K.S. was served with the Notice to End Tenancy on July 31, 2015. The administrator of the estate acknowledged receipt of the Notice later that day. The landlord's representative did submit evidence to show that Ms. K.S. acted as agent for the estate with respect to some property and tenancy matters.

The respondents denied substantially all of the landlord's evidence as to the conduct and behaviour of J.F. They submitted two copies of a voluminous binder of tabbed documents. The documents included a number of statements attesting to the character and friendly disposition of the respondent, J.F.

The respondents also submitted copies of documents relating to the tenant's request for permission from the landlord to sublet the manufactured home site to Mr. C.M. who has shared the occupancy of the trailer with J.F. The landlord contends that C.M is an unsuitable occupant and the landlord has proper reasons for refusing to approve a sublet to him.

The respondent, S.F. testified that the landlord's representative, D.C. dislikes J.F. and he goes out of his way to provoke and antagonize J.F.

Analysis

The landlord has claimed that the respondent, J.F. is responsible for a number of incidents and altercations in the manufactured home park that constitute cause for ending the tenancy. The landlord has referred to the tenant's criminal record and has provided copies of Breach of Contract warning letters given to the respondents.

The landlord alleged three grounds for the Notice to End Tenancy as follows:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The tenancy agreement for the site was made between the landlord and M.F., now deceased. The estate owns the manufactured home on the site. The agreement does not specify the number of occupants that will occupy the rental premises; the space to provide the number of occupants was left blank. The agreement provides that:

There will be ____person(s) occupying the rental premises and their names are:

In the spaces provided to write the names of occupants is written: "Will Rent".

The deceased M.F. owned other homes on sites in the park and rented them out to tenants. The estate continues to rent and manage these properties. Apparently the

only difference between the subject property and the others owned by the estate is that this one is occupied by the son of M.F. I find that the tenancy agreement does not specify how many occupants are permitted and I find that the landlord was aware that the respondent would rent the trailer to tenants without the requirement for the landlord's approval of individual occupants. The tenants of M.F. or of the estate who are residing in a trailer and paying rent for the trailer are in fact residential tenants of the estate, not tenants pursuant to a manufactured home park tenancy agreement. I find that the landlord has not proved that there are an unreasonable number of occupants on the site and I find as well that the landlord has not established that the respondent estate has assigned or sublet the unit without the landlord's written approval because the tenancy agreement contemplates that M.F. would rent to unspecified occupants.

The final ground alleged is that the respondents, presumably J.F. has engaged in illegal activity. The Residential Tenancy Policy Guidelines contain provisions with respect to what constitutes illegal activity. The Guideline provides in part that:

The Meaning of Illegal Activity and What Would Constitute an Illegal Activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

The landlord has provided evidence to show that the respondent J.F. has a criminal history. There is evidence that the police have attended at the rental property on several occasions, but the landlord has not provided evidence to establish that the respondent has been charged or convicted of any criminal offence related to an incident at the manufactured home park or related to the tenancy. I find that the landlord has not established on a balance of probabilities that the respondents, or any of them have

engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of other occupants or the landlord. This is a different test than simply determining whether a tenant may have significantly interfered with or unreasonably disturbed another occupant.

I find that the landlord has not established that the landlord has cause to end the tenancy based on any of the grounds stated in the Notice to End Tenancy and I therefore order that the Notice to End Tenancy be and is hereby cancelled. The tenancy will continue until ended in accordance with the Act.

There may be other valid grounds for ending the tenancy and this decision does not preclude the landlord from issuing another Notice to End Tenancy on other grounds.

Conclusion

The landlord's application for an order of possession is dismissed. The tenants' application to cancel the Notice to End Tenancy is granted. The tenants are entitled to recover the \$50.00 filing fee for the application and may deduct the said sum from a future instalment of rent due to the landlord.

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: March 2, 2016

Residential Tenancy Branch

