Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PINE RIDGE PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPT, FF

Introduction

On March 11, 2016, the Tenant submitted an Application for Dispute Resolution asking to cancel the two 1 Month Notices To End Tenancy For Cause that were issued on February 29, 2016, and March 9, 2016, and to be granted an order of possession for the rental unit. The Tenant also requests to recover the filing fee for the Application under the *Residential Tenancy Act ("the Act").*

The matter was set for a conference call hearing at 11:00 a.m. on April 20, 2016, and both parties appeared at the hearing. Neither party raised any issues regarding service of the application or the evidence. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me. In this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Matters

The Tenant provided documentary evidence of a written decision from the Residential Tenancy Branch made on March 9, 2009, where the issue of insurance and parking was considered with respect to his tenancy at the same dispute address. I will refer to this earlier Decision as the "2009 Decision". In the 2009 Decision the Tenant placed a Washington State licence plate on the vehicle before the Notice to End Tenancy was issued. The 2009 Decision states that the Tenant did not breach a material term of the agreement that was not corrected within a reasonable time after written notice to do so.

Issue(s) to be Decided

- Did the Tenant breach a material term of the tenancy agreement that was not corrected after a reasonable time after written notice to do so?

- Did the Tenant seriously jeopardize the health or safety or lawful right of another occupant or the landlord?
- Did the Tenant knowingly give false information to prospective tenant or purchaser of the rental unit /site or property park?

Background and Evidence

The Tenant testified that he purchased the manufactured home on June 3, 2008, with a completion date of June 5, 2008. On June 4, 2008, the Tenant and Landlord entered into an agreement for the Tenant to rent a manufactured home site commencing on July 1, 2008, for $430.00 per month on a month to month basis. A documentary copy of the agreement contains the name of the Tenant, and is signed and dated by the Tenant and the park manager at the time.

1 Month Notice to End Tenancy for Cause

On February 29, 2016, the Landlord served 1 Month Notice to End Tenancy for Cause to the Tenant by hand. The Landlord indicated the following reason for ending the tenancy on the Notice:

- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The Tenant disputed the Notice within the applicable timeframe.

The Landlord provided a copy of the Tenancy Agreement and he relies on the term of the Agreement where the Tenant agreed to abide by the park regulations. The Agreement contains seven terms. Term five states that the Tenant acknowledges having received and read the copy of regulations and guidelines attached to the agreement and forming a part thereof. Term six of the agreement states:

> *The Tenant after reading the regulations acknowledges and agrees that they are in the best interest of all tenants and covenants and agrees to abide by the regulations and any modification or changes that the Landlord shall from time to time make. The parties hereto agree that in the event of wilful infraction of any of these regulations by the Tenant this tenancy may be terminated upon thirty days written notice.*

The Landlord provided a copy of the regulations. Section five of the regulations, which I will refer to in this decision as “Park Rules” sets out the rules for the use of certain vehicles in the park and for the parking of vehicles in driveways. The Park Rules state

that all vehicles parked in driveways must have valid licence plates and that parking spaces on your lot are not to be used for storage of cars or other vehicles.

The onus to prove the reason to end the tenancy for breach of a material term is on the Landlord and for this reason the Landlord testified first.

The Landlord testified that he took over as park manager in May 2012. He stated that in the period of time from May 2012, to February 2016, he spoke to 10 residents regarding the parking and storage of uninsured vehicles in driveways. He states that the issue was resolved with nine of the residents, but not with the Tenant named in these proceedings. He stated that the Tenant refused to abide by the rule. He stated that if he was to make an exception, nobody would follow the rule. The Landlord testified that the Tenant was made aware that he could park the vehicle in the storage compound.

The Landlord testified that he sent the Tenant three warning letters and made three phone calls but the Tenant would not comply by getting proper insurance. The Landlord stated that after sending the warning letters he contacted the park owners who directed him to issue an eviction notice. The Landlord referred me to the copies of the letters he sent to the Tenant. The Landlord has provided three letters addressed to the Tenant dated January 25, 2016, January 28, 2016, and February 1, 2016. The letter dated February 1, 2016, states that the Tenant refused to obtain the proper insurance and refused the option to park in the storage area. The Landlords evidence also contains copies of Pine Ridge newsletters sent in 2012 and 2015 reminding tenants of the vehicle insurance rules. The Landlord also testified that he recently became aware that the Tenant has obtained proper insurance on the vehicle. The Landlord stated that he is still seeking an order of possession, if the notices are upheld. The Landlord stated that it would be difficult for the Tenant to have to move or sell his unit with short notice and that he would be agreeable to allow a month or two if the Notice is upheld.

The Tenant testified that the park management have been against him since day one. He testified that the same issue regarding vehicle insurance and parking arose with the previous park manager in 2009. He testified that the previous manager “harassed” him so much that in 2009 he attached a licence plate that he found on the side of the road to his vehicle. The Tenant stated that the current park manager is as “hard-nosed” as the previous one. He stated that he feels like he is under a microscope and the Landlord “runs the park like a concentration camp”. He testified that he had fire, theft, and collision insurance on the vehicle and that he owns his home outright. He testified that as of April 7, 2016, he now has collector plates on the vehicle. He also testified that he did not inform the Landlord that he was in the process of getting collectors plates

because he believed that there was no point. He stated that getting collectors plates was a three month process and it would not have made any difference to the Landlord.

The Tenant also testified that there is no legal reason why he should be required to have vehicle insurance for use on public roads in order to park his vehicle in his driveway. He stated that the Agreement and park rules should not apply to him because in 2008 he signed the Agreement before the sale was complete and he was under duress. He stated that he did not have time to read the Park Rules prior to signing.

Analysis

I have considered the issue raised by the Tenant that the Park Rules do not apply to him, and I find that they do. The Tenant signed the sale agreement on June 3, 2008 with a completion date on June 5, 2008. He signed the manufactured home lot agreement on June 4, 2008. I do not find that the date of the sale agreement has any relevance on the validity of tenancy agreement he signed with the Landlord.

With respect to duress, *Black's Law Dictionary*, St. Paul, Minn. West Publishing Co., defines "duress" as, *"...Subjecting a person to improper pressure which overcomes his will and coerces him to comply with a demand to which he would not yield if acting as a free agent."* There is insufficient evidence before me that the Tenant was subjected to improper pressure to overcome his will and coerce him to comply. Furthermore, had the Tenant actually signed under duress, one would expect that he would have raised the issue several years prior to this hearing. Based on the evidence and testimony, I find that the Tenant did not sign the Tenancy Agreement under duress.

Term five of the Agreement states that the Tenant acknowledges having received and read the copy of regulations and guidelines attached to the agreement and forming a part thereof. I find that the Tenant agreed to abide by the park rules and that any wilful infraction may result in the tenancy being terminated with thirty days' notice.

In considering whether the alleged breach was a material term of the Agreement, I turn to the Agreement. The Agreement states that any wilful infraction of any of these regulations may result in termination of the tenancy upon thirty days written notice. The Park Rules state that all vehicles parked in driveways must have valid license plates and that parking spaces are not to be used for storage of cars or other vehicles. The Landlord' evidence is that he has enforced this rule with Tenant's 10 times since May 2102 and that if he was to make an exception, nobody would follow the rule. After considering the evidence before me, I find that strict adherence to the rule regarding the

parking and storage of vehicles in the park is very important in the overall scheme of the Agreement. The Landlord has sent newsletter reminders and has consistently enforced the parking and insurance rule with other occupants of the Park. I find that term six of the Agreement sets out that a wilful breach of the park rules is considered a breach of a material term of the Agreement.

In considering whether there was a wilful breach of a material term, I have considered the 2009 Decision and I find that the Tenant is aware of the park rules for vehicle parking and insurance. The Tenant's testimony that he owns the home, and that he feels he is not legally required to have insurance for the road, and that the park rules do not apply to him, indicates to me that his failure to have proper insurance was intentional. The Tenant's testimony that he found a licence plate on the road in 2009 and placed it on his car indicates to me that he is aware of the rule and he has shown a pattern of intentionally not following this rule.

I have also considered that the Landlord issued three warning letters giving the tenant an opportunity to correct the breach. The Tenant had over a month to correct the breach before a Notice was issued. The Tenant did not try to deal with the issue by communicating his plans to the Landlord that he was getting Collectors plates. The Tenant testified that there was no point in communicating this. The Tenant testified that he got the proper insurance on April 7, 2016. I note that the Tenant's compliance with the Park Rule was 73 days after receiving the first warning letter and 39 days after he received the Notice to End Tenancy for breach of a material term on February 29, 2016.

After considering the testimony and evidence before me, I find that the Tenant wilfully breached a material term of the Tenancy that was not corrected within a reasonable time after written notice to do so. I dismiss the Tenant's Application to cancel the 1 Month Notice to End Tenancy dated February 29, 2016.

Since the Tenancy is ending under this cause, there is no need to consider the other 1 Month Notice to End Tenancy dated March 9, 2016.

Under section 55 of the Act, when a tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the order of possession. Accordingly, I grant the landlord an order of possession effective June 30, 2016.

All rights and obligations of the Landlord and Tenant, including the payment of rent, continue in accordance with my decision and order. Should the Tenant not comply, the Landlord can apply for an earlier Order of Possession.

Conclusion

As the Landlord indicated he would give the Tenant a couple of months, I grant the Landlord an order of possession effective June 30, 2016. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: April 22, 2016

Residential Tenancy Branch