Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing dealt with three Applications for Dispute Resolution filed by the tenants that were joined together to be heard at the same time as the matters under dispute were very similar and involved the same landlord and the same manufactured home park. The tenants requested cancellation of 10 Day Notices to End Tenancy for Unpaid Rent and Utilities issued to them on May 5, 2016 and May 10, 2016, respectively. The tenants also indicated that they were disputing an additional rent increase; however, that was amended to indicate they were seeking orders for compliance. All parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The tenants had elected one of the named tenants to be the lead tenant in making submissions during the hearing; however, all of the tenants were given an opportunity to be heard. The person elected as the lead tenant is identified as such on the cover page of this decision.

The landlord pointed out that the tenants' hearing documents were not properly served upon him. The tenants were of the position that they served an agent for the landlord. The landlord explained that the person they served his not his agent with respect to these matters and that the landlord had his service address on the 10 Day Notices that are under dispute. Nevertheless, the landlord acknowledged that he received the hearing documents from the third party and he was prepared to respond to the tenants' application and evidence. Accordingly, I deemed the landlord sufficiently served pursuant to the authority afforded me under section 64 of the Act. The tenants were cautioned that, in future, they should use the landlord's service address as provided to them on the relevant document served upon them.

In the days preceding the hearing the tenants had submitted additional documentation concerning property taxes, which was not matter related to outstanding rent or utilities or the 10 Day Notices under dispute. Given the issue of property taxes is unrelated to the primary issue at hand and the additional submission was submitted only seven days before the scheduled hearing, I did not permit the tenants to add another matter to this proceeding. The parties were informed that they are at liberty to file another Application for Dispute Resolution as necessary and appropriate with respect to other matters not addressed by way of this decision.

Issue(s) to be Decided

1. Should the 10 Day notices to End Tenancy for Unpaid Rent and Utilities be upheld or cancelled?
2. Is it necessary to issue orders for compliance to the landlord?

Background and Evidence

From the outset of the hearing, it was apparent that the tenants held a considerable amount of acrimony toward the landlord. As such, I have reproduced a brief summary of history involving the parties. The current landlord purchased the manufactured home park in 2009 from the former landlord. Shortly thereafter four tenants approached the landlord and informed him that they had "rent-to-own" agreements with the former landlord for the purchase of their manufactured homes. The landlord did not accept the tenants' position and in 2011 the tenants filed to have the matter decided in The Supreme Court of British Columbia. The landlord applied for an Additional Rent Increase with respect to several sites, including the site occupied by Tenant CP, and on August 15, 2012 the request was dismissed due to an incomplete application. At various times the tenants reduced their payments to the landlord and the landlord was unable to pursue a remedy through the Residential Tenancy Branch as the Branch does not have jurisdiction where a matter is before The Supreme Court. Finally, in September 2015 the landlord agreed to transfer the titles of the manufactured homes to the four tenants who claimed to have "rent-to-own" agreements with the former landlord for $0 so as to have the case filed with The Supreme Court dismissed and in exchange the tenants were required to sign new tenancy agreements with the landlord.

The landlord signed the transfer documents for the manufactured homes on October 6, 2015 and signed the new tenancy agreements, including addendums and a Utility Service Agreement, on October 31, 2015. The tenants signed the new tenancy agreements, including addendums, and a Utility Service Agreement, on December 11, 2015. The tenants received the transfer documents for their manufactured homes on December 16, 2015 and registered the transfer of the manufactured homes on December 21, 2016.

The new tenancy agreements signed by the three tenants before me in December 2015 are essentially identical except for the name of the tenant(s) and site number(s). I refer to the three tenancy agreements collectively as "the tenancy agreements". The tenancy agreements provide that the tenancy starts on November 1, 2015 and that the monthly rent of $439.94 is payable on the first day of every month. The tenancy agreements indicate that that there are no services or facilities included in the amount of rent payable other an "off street parking for 2 vehicles". The tenancy agreements indicate that there are six pages of Addendum containing 27 terms.

In addition to the tenancy agreements and addendums, the parties also signed a document entitled "Utility Service Agreement". The Utility Service Agreement provides for the tenant's

request for the manufactured home park to provide the tenant with water, sewer and garbage services and their agreement to pay for these services. The cost for water is to be based on meter readings if the site is equipped with a water meter and sewer costs are based upon water consumption. The agreement indicates that water meters will be read monthly and tenants will be billed each month with payment due 15 days after billing. The Utility Service Agreement further provides that if the site does not have a water meter a flat monthly charge of $20.00 will apply for water and sewer. The fee for garbage removal is stipulated as $10.00 per month.

The tenants did not pay the amount of rent stipulated in the tenancy agreement for the months of November and December 2015 but they paid lesser amounts. The tenants started paying the amount stipulated in the tenancy agreement starting in January 2016 although two tenants, EL and CP, paid a small portion of rent due for January and February 2016 later in February 2016. The tenants did not pay the landlord for any utility charges.

On May 5, 2016 the landlord prepared a written document outlining the rent, utilities, and late fees payable by the tenant for the months November 2015 through May 2016 and deducted the payments he received (this document is herein referred to as the Statements). The Statements were served to each tenant along with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities. The 10 Day Notices and the Statements were sent to the tenants via registered mail. The 10 Day Notices and Statements issued to Tenant EL and LG were sent on May 5, 2016 and the 10 Day Notice and Statement issued to CP were sent on May 10, 2016.

The tenants before me did not pay any portion of the arrears calculated by the landlord and filed to dispute the 10 Day Notices within the time limit for doing so.

Below, I have summarized the pertinent information that appears on the 10 Day Notices:

Tenant	Date of issuance	Stated effective Date	Amount of Unpaid Rent	Amount of Unpaid Utilities	Date Utilities Demanded in Writing
Tenant EL	May 5, 2016	May 20, 2016	$303.80	$210.00	May 1, 2016
Tenant LG	May 5, 2016	May 20, 2016	$419.36	$210.00	May 1, 2016
Tenant CP	May 10, 2016	May 25, 2016	$328.34	$210.00	May 1, 2016

Below, I have summarized some of the information that appeared on the Statements issued to the tenants along with the 10 Day Notices:

Tenant	Unpaid Rent	Unpaid Utilities	Late fees
Tenant EL	$128.80	$210.00	$175.00
Tenant LG	$244.36	$210.00	$175.00
Tenant CP	$153.34	$210.00	$175.00

In preparing the 10 Day Notices, the landlord added the amount of unpaid rent to the late fees in arriving at the amount of appearing on the 10 Day Notice as unpaid rent. The landlord questioned whether he could include late fees on the 10 Day Notice. When I informed the landlord that the amount should represent unpaid rent only, the landlord pointed out that the amount of unpaid rent was provided on the accompanying Statements yet the tenants did not pay the amount of unpaid rent.

As for the calculation of unpaid rent, the landlord submitted that all three of the tenants are required to pay the same amount of monthly rent of $439.94 starting November 1, 2015, as provided in the tenancy agreements; yet, the tenants paid various lesser amounts in November 2015 and December 2015 as seen in detail on the Statements issued for each tenant. The amount of unpaid rent represents the unpaid balances of rent owing for the months of November 2015 and December 2015 for each tenant.

The landlord enquired as to how the tenants calculated the amounts they paid for November 2015 and December 2015 as he was unaware as to how they had arrived at those amounts. In response, the tenants explained that they had been paying a single amount under the previous "rent-to-own" agreements, that had been increased periodically by way of Notices of Rent Increase, and that they reduced the amount payable by the amount that represented their "mortgage" payment for the purchase of their manufactured homes. The tenants stated that all of the "rent-to-own" agreements as they relate to the purchase of their manufactured homes had been fulfilled by the passage of time, meaning they had completed making the "mortgage" portion of their payments.

With respect to the unpaid utilities, the landlord relied upon the Utility Service Agreement as the basis for seeking $30.00 per month from each tenant ($20.00 for water and sewer, and $10.00 for garbage) starting November 1, 2015. The landlord stated that the tenants before me do not have water meters and the flat charge for water and sewer apply. I noted that the 10 Day Notices indicate that payment of utilities was demanded in writing on May 1, 2016; however, the landlord acknowledged that was an error. The landlord acknowledged that he had not given the tenants a written demand for utilities totalling $210.00 at least 30 days before issuing the 10 Day Notices. However, I noted that included in the evidence before me were written demands for utilities of $60.00 on February 2, 2016.

As for late fees, the landlord pointed to the addendum which includes a provision for a late fee of $25.00 "in the event your rent is late and not paid in full, by the 3rd."

As to the reason the landlord waited until May 2016 to issue 10 Day Notices to the tenants for amount owing back to November 2015, the landlord explained that the Residential Tenancy Branch did not have jurisdiction to resolve a dispute between the parties until such time the Supreme Court matter was dismissed, which did not happen until April 2016.

The tenants were initially of the position that the tenancy agreements were not enforceable because the tenants were "emotionally bankrupt" when they signed the tenancy agreements and that they signed them under duress and coercion. The tenants explained that they signed the new tenancy agreements based upon the advice of the Residential Tenancy Branch. Upon further enquiry, I determined they were referring to communication they had with an Information Officer with the Residential Tenancy Branch. I informed the tenants that the role of Residential Tenancy Branch Information Officers is to provide information concerning the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* based upon facts and information presented to them by the person making the enquiry, without the benefit of hearing from the other party or review of documentation. Accordingly, legal advice parties intend to rely upon should be sought from their own independent legal counsel. The tenants stated that they did have a lawyer representing them when they were going through the dispute concerning ownership of the manufactured homes and when entered into the new tenancy agreements. The tenants stated that they signed the new tenancy agreements because their lawyer advised them to. I indicated to the tenants that I would not consider the above submission to meet the definition of duress and the tenants' withdrew their submission. However, the tenants were of the position that they were told that any term they did not agree with could be reviewed within one year of signing the agreement. I was unaware of any provision in the Act or legal principle to which the tenants were referring and the tenants were unable to expand upon this position other than to say this is what they were told by their lawyer and/or Information Officer. Accordingly, I did not explore this position further.

The tenants pointed to the three points they made by way of their written submissions as their basis for not paying the amounts sought by the landlord. Below, I have summarized their three points:

1. The landlord is not entitled to charge for water and sewer since the water is supplied by a well and not the municipal water supply; and, the sewer is actually a septic system and not the municipal sewer system. These services are "essential services" meaning the landlord may not charge for them.
2. The previous "rent-to-own" agreements and subsequent Notices of Rent Increase show that water, sewer, and garbage were services included in their rent. The landlord's previous attempt to increase the rent in 2012 was unsuccessful and the reason for that was because these services were included in rent. The tenants provided a copy of the decision issued by the Residential Tenancy Branch in 2012.
3. The tenancy agreement is back-dated. The landlord is attempting to collect rent and utilities back to November 1, 2015 but the tenants did not receive title to their manufactured homes and sign the tenancy agreements until December 2015 meaning the first month the new rent came into effect was January 2016.

Aside from the above points, the tenants submitted that the Utility Service Agreements were altered by the landlord after they signed them, rendering them unenforceable. The landlord responded by stating that he added the tenants' names and site numbers as he thought the

tenants would complete these sections of the documents and did not. In any event, the landlord pointed out that the tenants signed the Utility Service Agreement in conjunction with their new tenancy agreements. When the tenants were questioned as to why the tenants signed the Utility Service Agreements, the tenants responded by stating that their lawyer told them to just sign the documents, which they did, and their lawyer did not review every page with them.

As for the tenants' allegation regarding "back-dating" the landlord responded by pointing out that the tenancy agreements clearly indicate that the rights and obligations under the new agreements were to start November 1, 2015 when it was presented to the tenants for their signatures and the tenants signed the agreements. When asked to explain the delay between the date the landlord signed the tenancy agreements and the date the tenants signed the tenancy agreements, the landlord stated that the parties were represented by their own respective legal counsel and that documentation was sent back and forth and appointments had to be scheduled to meet with the parties on various occasions.

It was undisputed that the tenants sent the landlord payments for rent for the month of June 2016. The landlord accepted the payment and in doing so sent the tenants receipts indicated he was accepted payment for use and occupancy only and that their tenancy was not being reinstated due to the payment.

The landlord indicated that he was prepared to accept a condition Order of Possession and continue the tenancies as he was more interested in receiving payment for what he is owed than evicting the tenants, provided the tenants were agreeable. The tenants were of the position that they did not owe any money to the landlord and did not consent to a conditional Order of Possession.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice. Where there is more than one reason indicated on a Notice to End Tenancy, it is sufficient to end the tenancy where one of the reasons is substantiated.

In this case, the Notices to End Tenancy issued to the tenants indicate two reasons for ending the tenancy: unpaid rent and unpaid utilities. A landlord may end a tenancy for unpaid rent under section 39(1) of the Act and a landlord may end a tenancy for unpaid utilities in circumstances described under section 39(6) of the Act. However, unpaid late fees are not a basis for ending a tenancy under the Act. .Accordingly, I proceed to determine whether the landlord was in a position to issue the 10 Day Notices for unpaid rent and/or unpaid utilities, as necessary.

Unpaid Rent

Under section 20 of the Act, a tenant must pay rent when it is due to the landlord in accordance with their tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Under section 39(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due.

The tenants have paid the rent for January 2016 through May 2016 in full, although tenants EL and CP paid a small portion late, and the issue of outstanding rent pertains to the months of November and December 2015 only.

The tenants are of the position that the landlord was not in a position to charge the new amount of rent for November and December 2015 since they had not received tile to their manufactured homes and signed the tenancy agreements until December 2015. After careful consideration of their position I find the landlord was entitled to receive the amount stipulated in the tenancy agreement for the months of November 2015 onwards. I make this finding considering the factors outlined below:

- The tenancy agreements signed by the tenants clearly indicate that their rent obligation of $439.94 per month started as of November 1, 2015;
- The tenants were in possession of their respective rental sites during the months of November and December 2015;
- The tenants' previous obligations under their former rent-to-own agreements had been fulfilled, meaning they were merely renting the site and the "mortgage" component for the purchase of the manufactured home had expired before November 1, 2015.

Having been satisfied that the tenants were obligated to pay $439.94 each month starting with the month of November 2015, and there was no dispute as to the amount actually paid by the tenants, I find the amount appearing as unpaid rent on the Statements mailed on May 5, 2016 and May 10, 2016 respectively were correct. Since the Statements accompanied the 10 Day Notices, I find the tenants had the information and opportunity to pay the outstanding rent so as to nullify the 10 Day Notice but they chose to dispute the 10 Day Notices and I find they have not presented a basis for me to conclude they did not owe the rent requested by the landlord. Therefore, I find there is a basis to end their tenancy for unpaid rent and I dismiss the tenant's request to cancel the 10 Day Notices served upon them.

Unpaid Utilities

Since I have found there is basis to end the tenancy for unpaid rent, I find it unnecessary to further analyze whether there is also a basis for ending the tenancy due to unpaid utilities.

Order of Possession

As I dismissed the tenants' request to cancel the 10 Day Notices I proceed to consider whether the landlord is entitled to an Order of Possession.

Section 48 of the Act provides circumstances when a landlord will be provided with an Order of Possession. Section 48(1) provides as follows:

> **48** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if
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> (a) the landlord's notice to end tenancy complies with section 45 *[form and content of notice to end tenancy]*, and
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> (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[Reproduced as written]

The landlord served the tenants with 10 Day Notices that is in the approved form and upon review of the 10 Day Notices I find they are duly completed and meet the content requirements. According, having dismissed the tenants' applications to cancel the 10 Day Notices I find the criteria of section 48(1) have been met and the landlord is entitled to an Order of Possession.

The tenants have paid for use and occupation of their respective sites for the month of June 2016; however, considering the date of this decision, I provide the landlord with an Orders of Possession for each tenant effective two (2) days after service. It will be upon the landlord to serve the Orders of Possession upon the tenants and the landlord is at liberty to enforce as necessary and appropriate.

As the tenancy has ended, I find it unnecessary to consider the tenants' request for orders for compliance. However, during the hearing, the landlord indicated a reasonable likelihood that the tenancies may be reinstated should the tenants satisfy the amounts owed. As such, I provide the following information to the parties with a view that there is a possibility the parties will mutually agree to reinstate the tenancies and with a view to assisting the parties avoid disputes in the future:

- When parties enter into a tenancy agreement subsequent to a previous agreement, the new agreement replaces the former agreement. As such, the inclusion of any services in the former tenancy agreement or former Notice of Rent Increase is not relevant to determining whether the tenant is required to pay for services under their current agreement. In keeping with this same logic, the dispute resolution decision issued in 2012 with respect to the landlord's application for an additional rent increase is not

relevant in determining whether the tenants are required to pay for utilities under their current tenancy agreement since it replaced any former agreement or former Notice of Rent Increase.

- The Utility Service Agreement indicates that it is a "separate conjunction agreement to your tenancy agreement". Considering the tenants signed the agreement at the same time and along with their tenancy agreement I find a reasonable person would conclude that the service agreement applies to services supplied to their particular site, and not any other site. Accordingly, I find the landlord's addition of the tenant's name and site number to be non-prejudicial and an inconsequential amendment that does not alter the meaning and intent of the document.
- The tenants referred to water and sewer as essential services. Under the Act a landlord may not terminate or restrict an essential service; however, the Act permits that a tenant may have to pay for services not included in rent, including essential services. The tenancy agreements signed by the tenants clearly indicate that the monthly rent payment of $439.94 does not include water or sewer or garbage in the monthly rent payment. As such, the tenants are expected to pay for such services in addition to their monthly rent obligation.
- The Utility Service Agreement does not provide a specific date when utilities are payable to the landlord. Considering the tenants with water meters are billed every month and are aware as to when their utility payment is due, I would suggest the landlord also invoice tenants who do not have meters and are required to pay the flat fee so as to establish when the utility charge is payable. A landlord may not issue a 10 Day Notice for unpaid utilities unless at least 30 days has passed since the written demand was made for payment for utilities. I noted that the Utility Service Agreement provides for a late payment fee and in the absence of a known due date for payment of utilities and the absence of an invoice, charging the tenants a late fee for late payment of utilities would appear to be without basis.
- Whether the water is supplied by a well or municipal water system is inconsequential. Rather, what is relevant is whether the tenants are supplied with water and if so, the tenants are not provided "free" water under their tenancy agreement. The same logic applies to the provision of waste management. I find it not particularly important that the waste water system is a septic system or a municipal sewer system. If the tenants are being provided with use of a waste water system and their rent does not include such a service then the tenants would be expected to pay for the service. It may be useful for the tenants to appreciate that well water systems and septic systems have costs associated with operating and maintaining the system.
- The tenants EL and CP appear to have paid their rent in full for the months of March, April and May 2016 thus the late fee appearing on the Statements would appear not to apply to unpaid rent for these months. The tenant LG appears to have paid his rent in full and on time for the months of January through May 2016 and it would appear that late fees would not apply to late payment of rent for these months. As such, I do not see a basis for the landlord to charge the tenants late fees for late payment of rent for these months. As for late fees on unpaid utilities, I have addressed that in an earlier point.

Conclusion

The amount of unpaid rent for each tenant was correctly identified on the Statements that accompanied the 10 Day Notices yet the tenants did not pay the amount. Since the tenants failed to pay the outstanding rent and were unsuccessful in establishing they had a right to not pay the rent required of them by way of their tenancy agreements, I dismiss their requests to cancel the 10 Day Notices served upon them.

Pursuant to section 48(1), the landlord has been provided Orders of Possession effective two (2) days after service upon the tenants.

I have not issued any Order for compliance since the tenancies have legally ended; however, I have also provided further information to the parties that may be useful if the parties mutually agree to reinstate the tenancy.

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: June 28, 2016

Residential Tenancy Branch