



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, AS

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”), and to allow the Tenants to sublet or assign the rental site because the Landlords’ permission has been unreasonably withheld.

The Tenants, the male Landlord, and an agent on behalf of the female Landlord owner appeared for the hearing and provided affirmed testimony. The male Landlord confirmed receipt of the Tenants’ Application and their extensive documentary evidence. The Tenants confirmed receipt of the Landlords’ documentary evidence served prior to the hearing. However, I did not consider any late documentary evidence that was not before me at the time of this hearing.

The hearing process was explained and no questions were asked of the proceedings. Both parties were given a full opportunity to present evidence, make submissions, and cross examine the other party on the evidence provided. The parties were also provided an opportunity to discuss the issues and resolve them through mutual agreement. Despite a lengthy discussion between the parties, they were unable to reach mutual agreement in this dispute. Therefore, I turned my mind to the issues below.

Issue(s) to be Decided

- Are the Tenants entitled to cancel the Notice?
- If so, are the Tenants allowed to assign or sublet the rental site?

Background and Evidence

Both parties confirmed that this tenancy started in the summer of 1996. The parties did not sign a written tenancy agreement. However, in 1994 the Tenants signed the park rules which were provided into evidence by the Landlords. The rent payable for the site

started off at \$190.00 and is currently \$275.00 payable on the first day of each month. The parties confirmed that the Tenants were not in any rental arrears.

The male Landlord was informed that they bear the burden to prove the Notice. Therefore, I asked the male Landlord to present evidence for the reasons on the Notice. The male Landlord explained that the female Landlord named on the Application was the owner of the park and that his wife was the agent acting on behalf of the owner.

The owner's agent testified that she resides in a home outside of the park but close to the rental site. On or about the end of May 2016 she heard the sound of tree branches being cut down from the Tenants' site. As a result, she informed the male Landlord who attended the Tenants' site. The male Landlord testified that he was greeted by an unknown person (herein referred to as "KV"), the full name for whom appears on the front page of this decision.

The male Landlord testified that he asked why KV was cutting the branches down from the trees and that KV replied telling him that he can do what he likes and that he should "Get the fuck off his property".

The male Landlord then informed the owner who visited the rental site to speak with KV. The owner's agent testified that KV was very arrogant and intimidating to owner who was an 84 year old lady. The owner's agent referred to a letter written by the owner in which she states that she saw KV throwing the branches over the fence and when she challenged KV about this he informed her that the land was his and he could do whatever he wanted to.

The owner's agent referred to photographic evidence which showed extensive cutting of all the branches of three large trees up to an area of 15-20 feet from the base of the trees. The owner's agent testified that the trees were planted there by the owner's husband 42 years ago who had passed away. The owner was very upset about this as this damage cannot be rectified. The owner's agent referred to the Tenants' breach of the park rules which the Tenants had signed in 1994, in particular number 3 which states:

"We will have no damage done to trees by nailing, attaching wire, climbing or cutting branches."

[Reproduced as written]

The owner's agent testified that KV is unknown to them and that the Tenants have sublet the rental unit to him without their written consent. The male Landlord testified

that they are concerned with KV's attitude and behaviour towards them as he has now put up no-trespassing signs in the mobile home.

The owner then instructed the male Landlord to serve the Tenant with the Notice. The Notice was dated and served to the Tenants on May 31, 2016. The Notice was provided into evidence and shows an effective vacancy date of July 31, 2016. The reasons for ending the tenancy shown on the Notice is because the:

- Tenants have caused extraordinary damage to the rental site; and
- Tenants have assigned or sublet the rental unit without the Landlord's written consent.

The female Tenant confirmed receipt of the Notice on May 31, 2016 and applied to dispute the Notice on June 9, 2016. The female Tenant confirmed that they pay monthly rent to the Landlords but only occupy the mobile home in the summer periods. The female Tenant confirmed that at the end of March 2016, KV moved into the mobile home. The female Tenant testified that KV is not a tenant and that he was there to simply do repairs to the rental unit and then decide whether he wants to purchase it. The female Tenant testified there is no tenancy agreement between the Tenants and KV, and that KV does not pay rent. The agreement is for KV to stay at the rental unit and do repairs, the cost of which will be deducted from the sale of the mobile home to him for which the negotiations are still ongoing.

The male Tenant testified that the owner and the male Landlord know who KV is as he knows the male Landlord's daughter. However, the male Tenant acknowledged that they had not formally informed the Landlords that KV was residing in their mobile home. The male Tenant testified that the male Landlord's demeanour was confrontational towards KV. The female Tenant explained that KV was acting as the caretaker of the mobile home and was there to complete renovations of their mobile home. However, KV had unilaterally extended his work to the trees on the rental site.

The female Tenant testified that after KV had cut the branches from the trees, she apologized to the Landlords that this was a mistake on behalf of KV and that they did not instruct KV to do this. The female Tenant asserted that KV did not know that the site was not part of the mobile home which is why he cut the branches off and informed the Landlord that it was his property. The female Tenant argued that despite this, the branches hanging from the tress at the bottom posed a serious and significant fire risk and that pursuant to a fire safety information pamphlet they had received, the work was consistent with the information contained within. The owner's agent disputed this submitting that if KV was concerned about a fire risk, then why did he throw the

branches over the fence, as shown in the Landlord's photographic evidence, which created an equal risk of fire if not more.

The female Tenant also stated that the cutting of the tree branches allowed the sun to get to the already dead lawn which had since recovered. The Tenants provided extensive photographs which showed the pruned tress and that the appearance of the site had considerably improved since the branches were cut down.

The male Tenant referred to a previous hearing that had occurred between the parties in which the Landlords had been ordered not to interfere with the sale of the mobile home. The male Tenant testified that the male Landlord had informed them that he wanted the Tenants off the site and that he should sell it as quickly as possible. The female Tenant stated that they were in the process of selling their mobile home to KV and that this process should be complete soon and should not be interfered with.

The male Landlord voiced his concern about having KV as a resident of the park. The female Tenant explained that the Landlords were singling her out and only applying the park rules to her and not to other residents who were breaching them.

Analysis

In relation to the Notice, I find the format and content of the Notice complied with Section 45 of the Act. I also accept the parties' evidence that the Tenants were served with and received the Notice on May 31, 2016. The Tenants made the Application to dispute the Notice on June 9, 2016. Therefore, I find the Application was made within the 10 day time limit stipulated by Section 40(4) of the Act.

When a landlord issues a tenant with a Notice for the reasons in this case, the landlord bears the burden of proving the reasons on the Notice disputed by the tenant. The landlord need only prove one of the reasons on the Notice to have the tenancy ended. Therefore, I first turn my mind to the reason on the Notice that the Tenants have caused extraordinary damage to the rental site.

In this respect, I find that when the Tenants allowed KV to occupy their mobile home, they had a duty to inform KV that he did not have any jurisdiction to make change to the rental site without the Landlord's consent. I find that the Tenants had signed and acknowledged the park rules which specifically prohibited the Tenants from cutting any branches from the trees, and I find this requirement would have extended to any guest or occupant of the Tenants.

I find that if the Tenants or KV had any concern that the low level branches posed a fire danger to their mobile home, then this should have been addressed in writing with the Landlords. The Landlords would then have been required to deal with this issue pursuant to Section 26(1) of the Act.

Furthermore, there was no written agreement or a term of a written agreement that required the Tenants or their guests to maintain the rental site. Therefore, I find that KV went beyond any reasonable level of maintenance that would have been reasonably expected of the Tenants.

Based on the photographic evidence before me I do find that KV caused extraordinary damage to the three trees. This is because the branches cannot be replaced and therefore this damage of the aged trees is not repairable and permanent in nature. In addition, I find that such an undertaking should only have been executed by a tree specialist who would have taken any relevant action to ensure the longevity of the trees and prevent any long term effects to the trees that may have been caused by the manner in which the tree branches were cut. While I take into consideration that the cutting of the tree branches lead to other improvements, such as recovery of the lawn, I cannot use this reason alone to detract from the damage that was caused to the trees which I find extraordinary in nature.

As I have made a finding that the Landlord has proved the 1 Month Notice in relation to extraordinary damages, I did not consider the parties' evidence in relation to the 1 Month Notice for the illegal sublet of the rental site as this reason is now moot. As a result, I dismiss the Tenants' Application to cancel the 1 Month Notice.

Section 48(1) of the Act states that if a tenant makes an Application to dispute a Notice the Arbitrator **must** grant an Order of Possession if the Notice complies with the Act and the tenant's application is dismissed. As I have made a finding that the Notice complies with Section 45 of the Act and the Tenants' Application to the cancel the 1 Month Notice is dismissed, the Landlord must be granted an Order of Possession.

This order is effective at 1:00 p.m. on July 31, 2016 in accordance with the vacancy date on the Notice. The Tenants must be served with a copy of the order and this may be enforced through the Supreme Court of British Columbia. Copies of this order are attached to the Landlord's copy of this decision.

As the tenancy is to shortly end, I also dismiss the Tenants' Application to assign or sublet the rental site.

Conclusion

The Tenants' Application to cancel the Notice and assign/sublet the rental unit is dismissed without leave to re-apply. The Landlord is issued with an Order of Possession to end the tenancy at 1:00 p.m. on July 31, 2016.

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: July 17, 2016

Residential Tenancy Branch