Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This was the landlord's application under the *Manufactured Home Park Tenancy Act* (the "Act") for an order of possession for unpaid rent and a monetary order for unpaid rent based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 19, 2017 (the "10 Day Notice").

The landlord is a cooperative association (the "Cooperative"). Both the tenant and the landlord attended the hearing. The landlord was represented by counsel. The landlord had a witness prepared to speak to the question of service but that evidence was not required. Both parties were given a full opportunity to be heard, to present affirmed testimony and documentary evidence, to make submissions and to respond to the submissions of the other party.

Over the course of the hearing, counsel for the landlord indicated that the tenant has not paid rent in full for May or June, and the landlord's application was amended to include a claim for the shortfall for these months. This amendment was made pursuant to Rule of Procedure 4.2, which allows for amendments that can be reasonably anticipated, such as this.

Preliminary issue: jurisdiction

At the outset of the hearing the tenant submitted that I did not have jurisdiction. In response the landlord submitted that I do have jurisdiction under the Act to decide this dispute. Counsel for the landlord advised that the tenant owns the manufactured home in question and the Cooperative owns the land. Counsel pointed to a document titled "Monthly Tenancy Agreement" between the management of the Cooperative and the tenant and another tenant, signed in 1995, which provides that the agreement is subject to BC's *Residential Tenancy Act*.

The tenant acknowledged having signed this agreement but stated that she purchased her manufactured home based on the representation that she would be soon after be

purchasing a share in a cooperative. She signed the agreement in 1995 but believed that it would be in effect only for a short period of time based on the representation that a share would be made available to her. The Cooperative owned 28 sites and there was supposed to have been one share for each site. Each shareholder was supposed to have contributed money based on the size of their site.

The tenant submitted that she "did not move in" to be anyone's renter and that she entered into the original agreement in order to be on equal footing with member shareholders. The tenant also stated that the shares became available in 1997, at which point she did not consider that they were not worth the asking price because of another member's conduct. The tenant therefore did not purchase a share in the Cooperative.

The Cooperative has increased the rent over the years using a series of "Notice of Rent Increase – Manufactured Home Site" forms, copies of which were in evidence. The tenant confirmed that she has been paying the amounts charged on the first of the month since 1995.

The tenant submitted that the *Cooperative Association Act* prohibits agreements between a cooperative association and non-members, so the alleged tenancy agreement is illegal and her tenancy "never should have happened." She did not point me to any specific section of that statute prohibiting this sort of agreement. The tenant did point me to a document called "Member's Agreement and Licence" signed by a third party in 1992 and cited to a section in the preamble stating that the agreement is meant to "further specify the respective rights and obligations arising out of the Member's ownership of a share in the Association and in particular to specify the site which the Member's share entitle him to occupy." The tenant appeared to be saying that this section in the preamble meant that the Cooperative was only supposed to allow members to occupy the sites. She also said that there are seven non-members renting from the Cooperative and that they pay the "lion's share" of the costs.

Based on the above, the tenant submitted that the agreement was illegal and referred to the Residential Tenancy Branch's Policy Guideline # 20.

The tenant also argued that there is no jurisdiction because this is a commercial tenancy pursuant to Policy Guideline #14. She argued that it was a commercial tenancy because the Cooperative was originally owned by a shareholder who profited from it. She also pointed to an archived CRA publication that she had submitted describing the circumstances under which the income of an association is tax exempt and argued that these circumstances applied with the result that the Cooperative is a commercial enterprise.

Counsel for the landlord submitted that the written tenancy agreement and the tenant's conduct since 1995 (the fact that she has paid to occupy the site as per the agreement and the subsequent rent increases) establish that there is a tenancy. Counsel also submitted that the *Cooperative Association Act* does not prohibit a cooperative from contracting with non-members and pointed to s. 2 of the *Manufacture Home Park Tenancies Act,* which provides that it applies "despite any other enactment but subject to section 4." He further stated that non-members may pay more to occupy the sites because members have already invested in the cooperative by purchasing a share.

Counsel for the landlord also pointed to s. 4 of the *Manufacture Home Park Tenancies Act* , which excludes (a) tenancy agreements under which the site and the home are both rented to the same tenant, and (b) prescribed agreements, sites, and parks, from the Act. He submitted that neither such exclusion applies here.

With respect to the tenant's submission that the Cooperation is a commercial enterprise and is therefore not under the jurisdiction of the Act, counsel argued that the Cooperative is a not-for-profit, and that if it is not paying tax, this is consistent with the fact that it is not a commercial enterprise.

I conclude that I have jurisdiction under the Act based on counsel's submissions with respect to the tenancy agreement and sections 2 and 4 of the Act. Section 2 provides that the Act applies to "tenancy agreements, manufactured home site and manufactured home parks." I find that the rental agreement is a tenancy agreement and that the land owned by the Cooperative is a manufactured home park.

Although the tenant has raised the illegality of the contract, she has not referred to any statute that makes the contract illegal. I also note that even agreements that are contrary to certain statutes may still be enforceable, as set out in Policy Guideline #20. Here, the tenant has occupied the manufactured home park site in question since 1995 in return for the payment of a certain sum and has not raised her concerns over the validity of the agreement for over twenty years. In these circumstances it is difficult to see why the contract should not be enforced.

I do not accept that this agreement is excluded from the application of the Act because it is a commercial tenancy. Commercial tenancies are excluded from the *Residential Tenancy Act* but are not explicitly excluded by the *Manufactured Home Park Tenancy Act*. Additionally, that exclusion is with respect to living accommodation that is primarily occupied for business purposes. The question is thus not whether the landlord is conducting a commercial enterprise, but whether the tenant is. The question to be asked is whether the tenant is making use of the rental site predominately for commercial or residential purposes. It is also important to note the most landlords operate their parks as commercial enterprises -- that is, to make money. This does not mean that the tenancy has become a commercial tenancy.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

According to the written agreement in evidence and the landlord's submissions, this tenancy began in March 1, 1995. The tenant also acknowledges that she has been occupying the site since 1995. Monthly rent is currently $375.00 payable on the first day of each month. The parties agreed that since January of 2017 the tenant has paid only $110.00 (and in June $111.00) monthly such that there is currently $1,589.00 owing.

It was also agreed that the tenant was personally served with the 10 Day Notice, which has an effective date of April 29, 2017, on April 19, 2017. The tenant acknowledged that she failed to either dispute the notice or pay the full rent owing within five days of being served.

Analysis

Based on the evidence before me, I find that the tenant failed to pay amount owing in full as set out on the 10 Day Notice within five days of being served the 10 Day Notice. The tenant has not made an application pursuant to s. 39 of the Act within five days of receipt of the 10 Day Notice.

In accordance with s. 39(5) of the Act, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on April 29, 2017, the effective date on the 10 Day Notice. The tenant and anyone on the premises were required to vacate the premises by that date. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to s. 48(2) of the Act. I find that the landlord's 10 Day Notice complies with s. 45.

It was agreed that there is currently $1,589.00 outstanding. Therefore, I find that the landlord is entitled to a monetary order in this amount.

As the landlord was successful in this application, I find that the landlord is also entitled to recover the $100.00 filing fee.

Conclusion

The landlord's application is allowed.

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **$1,689.00** against the tenant. The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court 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 s. 9.1(1) of the Act and is final and binding unless otherwise indicated in the Act.

Dated: June 08, 2017

Residential Tenancy Branch