



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, AS, O, FF

Introduction

The tenants apply to cancel a one month Notice to End Tenancy for cause. They also seek a monetary award for auto repair, the cost of printer ink and photos.

It was apparent that the Notice extant at the time this application was made is no longer in effect. Since this application was made another Notice, dated November 10, 2017 has been given by the landlord. All parties agree that it was this Notice that should be dealt with at this hearing. The Notice is in the statutory form and alleges that the manufactured home site must be vacated to comply with a government order.

The Residential Tenancy Rules of Procedure direct that unrelated applications may not be combined. The tenants' request for monetary relief and possible request for permission to sublet or assign the tenancy are unrelated to the request to cancel the Notice. I therefore have exercised my discretion to sever those claims and proceed to determine only the claim to cancel the November 10 Notice. I dismiss the unrelated claims with leave for the tenants to re-apply (or add to the other proceeding they have commenced, as outlined below).

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Are there good grounds for the Notice to End Tenancy dated November 10, 2017?

Background and Evidence

The manufactured home site is one of two on the landlord's semi-rural property. It would appear that site was originally intended as a recreational vehicle site, with hookups for short term RV use.

The tenancy started in July 2014. The tenancy is month to month at a rent of \$362.00. The tenants have two RV's on the property, connected by an enclosed structure.

The landlord lives in a home on the same property.

The Notice in question claims that the site must be vacated to comply with a government order. Section 40(1)(j) of the *Manufactured Home Park Tenancy Act* (the "Act") provides that a landlord may end a tenancy with a one month Notice where "the manufactured home site must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority."

The "DETAILS OF CAUSE" portion of the Notice states; "Received Bylaw Contravention Order from the Regional District of Nanaimo to remove the RV from this property."

The landlord submits a letter from the Regional District of Nanaimo dated November 1, 2017. The letter notes that the property in question is zoned AG-1 Agriculture, which permits residential use however a recreational vehicle is not recognized as a dwelling unit.

The landlord testifies that he has been using the property as a place for recreational vehicles even before the bylaw came into effect. By this I take it that he considers the present use of the property to be lawfully non-conforming and thus not subject to the zoning bylaw; an exception carved out by s. 528 of the *Local Government Act*, RSBC 2015, c. 1.

Nevertheless, the landlord states that the local government bylaw enforcement officer has told him it is up to him to "take them to court" to prove the property's lawful non-conforming status.

The tenants say they have spoken to the bylaw enforcement officer and he has told them that the Regional District is flexible about the compliance date. They have a significant amount of property on the site and moving away would be a major project for them.

Analysis

The ending of a tenancy is a very serious matter. Often it requires a person to give up what has become his or her home. A landlord proceeding to end a tenancy will be required to strictly comply with the law, rules and procedure entitling him to do so.

In this case I find that the local government has not ordered that the manufactured home site must be vacated. It has directed that the tenants' recreational vehicle not be used as a dwelling; that its occupancy for that purpose cease. There is no direction or order that the recreational vehicle be removed, as the landlord has alleged in the Notice.

If the local government letter is a valid command, it does not appear to prevent the tenants from continuing to use the manufactured home site they are renting, either with the present accommodation on a recreational basis or by bringing on a dwelling or structure that meets the local government's standards.

For these reasons I cancel the Notice to End Tenancy dated November 10, 2017.

I make no determination about whether or not the landlord's use of the property is a lawful non-conforming one.

I make no determination about whether the tenants' recreational vehicle comes within the definition of "dwelling unit" found in the local government's Electoral Area "F" Bylaw.

The tenants have brought another application (file number shown on cover page of this decision) seeking to cancel this Notice and seeking monetary relief for what appears to be a variety of matters. The hearing of that matter is set for February 2, 2018. So far as the Notice is concerned, it has been cancelled in this proceeding.

The tenants are free to pursue the monetary claims in that proceeding on February 2 and I would suggest that they amend that application to include the monetary claims brought in this application but which have been dismissed with leave to re-apply, so that all matters can be heard at the same time.

Conclusion

The tenants' application is allowed. The Notice to End Tenancy dated November 10, 2017 is cancelled.

The tenants are entitled to recover the \$100.00 filing fee for this application. I authorize them to reduce their next rent due by \$100.00 in full satisfaction of the fee.

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: November 28, 2017

Residential Tenancy Branch