Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gemini Ventures
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPC, MNDC, FF, O

Introduction

The hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Cause, a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that the Landlord's Application for Dispute Resolution and the Notice of Hearing were served to the Tenants by registered mail, although he cannot recall the date of service. The Tenant acknowledged receiving these documents on October 25, 2017.

The Tenants filed an Application for Dispute Resolution, in which the Tenants applied for "other" and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that the Tenants' Application for Dispute Resolution, the Notice of Hearing and 10 pages of evidence submitted with the Application were served to the Landlord, by registered mail, on August 31, 2017. The Agent for the Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On September 11, 2017 the Tenants submitted an Amendment to an Application for Dispute Resolution in which the Tenants applied to cancel a Notice to End Tenancy. The Tenant stated that this document was sent to the Landlord, via registered mail, on September 11, 2017.

On September 11, 2017 the Tenants submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on September 11, 2017. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On October 16, 2017 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was not served to the Tenants. As the evidence was not served to the Tenants, it was not accepted as evidence for these proceedings.

On October 24, 2017 the Landlord submitted a large amount of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, by registered mail, although he cannot recall the date of service. The Tenant acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

On November 09, 2017 the Tenants submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on November 07, 2017 and that it was in the process of being returned to her by registered mail. The Agent for the Landlord stated that the Landlord did not receive notification of this registered mail.

The Tenants were advised that although I accept this evidence was properly served to the Landlord, I cannot conclude that it was received by the Landlord, possibly due to an error by Canada Post. The Tenant was advised that the hearing would proceed without the benefit of that evidence; that the Tenants could refer to that evidence during the hearing; and that any point in the hearing the Tenants could request an adjournment for the purposes of re-serving that evidence to the Landlord. At the conclusion of the hearing the Tenant stated that she did not need an adjournment for the purposes of re-serving her evidence.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the parties have identified several issues in dispute on the Application for Dispute

Resolution, which are not sufficiently related to be determined during these proceedings.

I will consider the consider the most urgent issue(s) in dispute at these proceedings, which are the Landlord's application for an Order of Possession and the Tenants' application to cancel a One Month Notice to End Tenancy.

In my view the Landlord's application for a monetary Order and the Tenants' dispute relating to removing a shed and fence are not sufficiently related to the other issues in dispute and those claims, are hereby severed. Both parties retain the right to file another Application for Dispute Resolution in regards to these claims.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be set aside?
Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord and the Tenants agree that:

- the Tenant and the Landlord signed a tenancy agreement for a tenancy that began on May 01, 2014;
- neither party has ended this tenancy in accordance with section 37 of the *Manufactured Home Park Tenancy Act (Act*);
- on September 05, 2017 the Landlord sent the Tenants a One Month Notice to End Tenancy for Cause, by registered mail; and
- the Notice to End Tenancy declares that the Tenants must vacate the rental unit by October 08, 2017.

A copy of the One Month Notice to End Tenancy for Cause was submitted in evidence. This Notice declares that the tenancy is ending because the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right of the landlord or another occupant; because the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and because the tenant has assigned or sublet the rental site.

The Agent for the Landlord that the Landlord mistakenly selected the box that indicates the tenancy is ending because the tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right of the landlord or another occupant.

In support of the application to end the tenancy because the Tenants have assigned or sublet the rental site the Agent for the Landlord stated that in 2015 ownership of the manufactured home passed from the Tenant to the co-owner of the rental unit, who became the sole owner of the unit, and that on August 29, 2017 the Tenant became a co-owner of the rental unit. The Tenant agrees that ownership passed from her to her mother in 2015 and that she and her mother became co-owners on August 29, 2017.

The Landlord and the Tenant agree that the Tenant has not moved out of the rental unit since the tenancy began in 2014.

In support of the application to end the tenancy because the Tenants have breached a material term of the tenancy agreement the Agent for the Landlord stated that the Tenants have breached section 6 of their tenancy agreement, which stipulates that if a tenant wishes to sell their manufactured home and they wish it to remain in the manufactured home park, the tenant must apply and obtain approval from the Landlord prior to the completion of the sale.

In support of the application to end the tenancy because the Tenants have breached a material term of the tenancy agreement the Agent for the Landlord stated that the Tenants have breached section 9 of their tenancy agreement, which stipulates, in part, that at all times at least one of the person listed on the tenancy agreement must be the legal owner of the manufactured home.

The Tenant stated that she was not aware of these terms of the tenancy agreement as they were not discussed with her when she signed the tenancy agreement and she did not receive a copy of the tenancy agreement until it was served to her as evidence for these proceedings. The Agent for the Landlord stated that he does not know if these terms were discussed with the Tenants at the start of the tenancy or if she was provided with a copy of the tenancy agreement, as he was not representing the Landlord at that time.

Analysis

Section 40(1) of the *Manufactured Home Park Tenancy Act (Act*) authorizes a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) the tenant is repeatedly late paying the rent;
(b) there are an unreasonable number of occupants on the manufactured home site;
(c) the tenant or a person permitted in the manufactured home park by the tenant has
    (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park,
    (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
    (iii) put the landlord's property at significant risk;
(d) the tenant or a person permitted in the manufactured home park by the tenant has engaged in illegal activity that
    (i) has caused or is likely to cause damage to the landlord's property,
    (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the manufactured home park, or
    (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
(e) the tenant or a person permitted in the manufactured home park by the tenant has caused extraordinary damage to a manufactured home site or the manufactured home park;
(f) the tenant does not repair damage to the manufactured home site, as required under section 26 (3) *[obligations to repair and maintain]*, within a reasonable time;
(g) the tenant
    (i) has failed to comply with a material term, and
    (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
(h) the tenant purports to assign the tenancy agreement or sublet the manufactured home site without first obtaining the landlord's written consent or an order of the director as required by section 28 *[assignment and subletting]*;
(i) the tenant knowingly gives false information about the manufactured home park to a prospective tenant or purchaser viewing the manufactured home park;
(j) the manufactured home site must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
(k) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
    (i) the date the tenant receives the order;
    (ii) the date specified in the order for the tenant to comply with the order.

On the basis of the undisputed evidence, I find that the Tenants were served with a One Month Notice to End Tenancy for Cause which declared that they must vacate the rental unit by October 08, 2017.

As the Landlord did not intend to end this tenancy because the tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right of the landlord or another occupant, I find there is no need to determine whether the Landlord has the right to end this tenancy pursuant to section 40(1)(d)(iii) of the *Act*.

Residential Tenancy Branch Policy Guideline #19, with which I concur, defines assignment as the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord. It further stipulates that when a manufactured home park tenancy is assigned, the new tenant takes on the obligations of the original tenancy agreement, and is usually not responsible for actions or failure of the original tenant to act prior to the assignment.

As there is no evidence that the Tenant or her co-Tenant have assigned the rights of their tenancy agreement to a third party, I cannot conclude that the Tenants have assigned this tenancy.

Residential Tenancy Branch Policy Guideline #19 suggests that a sublease occurs when the original tenancy agreement remains in place between the original tenant and the landlord, and a new agreement (usually called a sublease) is entered into by the original tenant and the sub-tenant. The policy guideline suggests that the original tenant remains the tenant of the original landlord, and, assuming the original tenant moves out of the rental unit, the original tenant grants exclusive occupancy to the sub-tenant and the original tenant becomes the "landlord" of the sub-tenant.

As there is no evidence that the Tenant or her co-tenant entered into a new tenancy agreement with a sub-tenant, I cannot conclude that the rental site has been sublet.

As the Landlord has failed to establish that the tenancy has been assigned or sublet, I find that the Landlord does not have the right to end this tenancy pursuant to section 40(1)(h) of the *Act*.

Residential Tenancy Branch Policy Guideline #8, with which I concur defines a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. The guideline stipulates, in part, that:

- to determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach
- it falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term;
- the question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question
- it is possible that the same term may be material in one agreement and not material in another;
- simply because the parties have put in the agreement that one or more terms are material is not decisive; and
- during a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Landlord did not specifically discuss terms 6 and 9 of the tenancy agreement when the tenancy agreement was signed. As the parties did not specifically discuss those terms, I cannot conclude that both parties agreed that the terms were so important that the most trivial breach of those terms would give the other party the right to end the agreement. As I cannot conclude that both parties agreed that the terms were so important that the most trivial breach of the terms would give the other party the right to end the agreement, I find that the Landlord has submitted insufficient evidence that these were material terms of the tenancy agreement.

As I am unable to conclude that terms 6 and 9 of the tenancy agreement were material terms of the tenancy agreement, I find that the Landlord does not have the right to end this tenancy, pursuant to section 40(g) of the Act, even if the Tenant did breach those terms.

As the Landlord has failed to establish grounds to end the tenancy for any of the reasons cited on the Notice to End Tenancy, I grant the Tenants' application to set aside the One Month Notice to End Tenancy and I dismiss the Landlord's application for an Order of Possession.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the cost of filing an Application.

I find that the Landlord has failed to establish the merit of their Application for Dispute Resolution and I dismiss the Landlord's application to recover the cost of filing an Application.

Conclusion

The Tenants have established a monetary claim of $100.00 in compensation for the cost of filing an Application for Dispute Resolution. I therefore authorize the Tenant to reduce one monthly rent payment by $100.00 in full satisfaction of this monetary claim.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 22, 2017

Residential Tenancy Branch