Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the "*Act"*) for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 40; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 65.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the landlord with her application for dispute resolution on March 29, 2019 via registered mail. The tenant entered into evidence a Canada Post receipt to confirm this registered mailing as well as a tracking sheet showing that the package was picked up on April 3, 2019. The landlord testified that he received the tenant's application for dispute resolution but could not recall on what date. I find that the tenant's application for dispute resolution was served on the landlord in accordance with section 82 of the *Act.*

I note that section 48 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 40 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 65 of the *Act*?

3. If the tenant's application is dismissed and the landlord's Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 48 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2013 and is currently ongoing. Monthly rent in the amount of $325.00 is payable on the first day of each month.

The landlord testified that in February of 2019 he received a letter from the Regional District dated February 14, 2019 which states:

> This letter is to advise you that the [Regional District] is in receipt of a complaint against your above identified property….Further complaint information received *alleges* a secondary dwelling located on the property may be used as a rental accommodation.
>
> Please be advised your property is assigned a zone designation of Agriculture (AG1) under the [Regional District Bylaw]. Although the bylaw provides for secondary residents to be located on properties in an Agriculture zone designation, the secondary dwelling must be used by an immediate family member (father, mother, brother, sister, grandparent) or for bona fine farm help if it is located on a working farm….
>
> At this time you are hereby requested to contact the undersigned by no later than *February 22, 2019,* to discuss the allegations against your property and explore options available to you should your property be in non-compliance with the [Regional District] Bylaws….

The February 14, 2019 letter was entered into evidence.

The landlord testified that on March 22, 2019 he personally served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of April 22, 2019 (the "One Month Notice"). The tenant confirmed receipt of the One Month Notice on March 22, 2019.

The One Month Notice stated the following reason for ending the tenancy:

- Rental unit/site must be vacated to comply with a government order.

The landlord testified that he served the tenant with the One Month Notice because of the letter dated February 14, 2019 he received from the Regional District.

The landlord testified that in April of 2019, after he served the tenant with the One Month Notice, he received another letter from the Regional District dated April 15, 2019 which states in part:

> ….Please be advised, your land parcel is completely located in recognized agricultural land reserve and subject to the ALC Act. The ALC Act does not permit permanent secondary residents to be located on the same land parcel. The ALC Act authorizes a mobile home for immediate family or bona fide farm help with the stipulation the mobile home must be removed from the property and the ground rehabilitated to its original state.
>
> The mobile home that is located on your property and occupied by [the tenant] is in non-compliance with the [Zoning Bylaw]….
>
> …the Regional District… is requesting the mobile home be removed from your land parcel within ninety (90) days from the date of this letter….
>
> Please be further advised, failure to bring your land parcel into voluntary compliance may result in the [Regional District] taking enforcement actions against you….

The tenant testified that neither of the letters from the Regional District are Orders from the Regional District and so the landlord has not met the eviction requirements to end the tenancy under the One Month Notice.

Analysis

Section 40(1)(j) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the manufactured home site must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

I note that in determining if the One Month Notice is valid, I can only take into consideration events that occurred up until the date the One Month Notice was served on the tenant. I must determine if, on the date the One Month Notice was served, the landlord had valid reasons for ending the tenancy. In this case, I can consider events that occurred up until March 22, 2019. I will therefore not consider the letter received by the landlord from the Regional District in April of 2019.

I find that the letter from the Regional District dated February 14, 2019, does not Order the landlord to remove the tenant's trailer from the subject rental property or otherwise Order the tenancy to end. I find that the February 14, 2019 letter contains no Orders whatsoever. Based on the above, I find that the landlord has not met the eviction requirements under section 40(1)(j) of the *Act.* The One Month Notice is therefore cancelled and of no force or effect.

As the tenant was successful in her application, I find that she is entitled to recover the $100.00 filing fee from the landlord, pursuant to section 65 of the *Act.*

Section 65(2) states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct $100.00, on one occasion, from rent due to the landlord.

Conclusion

The One Month Notice is cancelled an of no force or effect.

The tenant is entitled to deduct $100.00, on one occasion, from rent due to the landlord

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: May 14, 2019

Residential Tenancy Branch