Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SPECTACLE LAKE HOME PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNDL, FFL
CNR, AAT, OLC, PSF, RP, RR, FFT

Introduction

This hearing convened as a result of cross applications.

In the Landlord's Application, filed on February 5, 2019, the Landlord sought an Order of Possession and monetary compensation pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on December 28, 2018 (the "Notice") as well as recovery of the filing fee.

In the Tenant's Application for Dispute Resolution, filed on February 13, 2019, the Tenant sought the following relief:

- an Order canceling the Notice;
- an order allowing the Tenant or the Tenant's guests access to the manufactured home site;
- an Order that the landlord:
  - comply with the *Manufactured Home Park Tenancy Act,* the *Manufactured Home Park Regulation,* and/or the residential tenancy agreement;
  - provide services or facilities as required by law;
  - make repairs to the manufactured home park tenancy site;
- an Order that the Tenant's rent be reduced by the cost of repairs, services or facilities; and,
- recovery of the filing fee;

The hearing was scheduled for teleconference at 11:00 a.m. on March 18, 2019. The hearing did not complete and was adjourned to May 7, 2019 and then adjourned again

to May 17, 2019. In total the hearings occupied over five hours of hearing time. Both parties called into the hearings as did their legal counsel.

At the outset of the hearing on March 18, 2019 it became apparent that part of the Landlord's evidence was not uploaded to the service portal. Pursuant to my Interim Decision dated March 20, 2019 (which must be read in conjunction with this my Final Decision), I allowed the Landlord to resubmit and reserve their evidence.

Aside from the evidence issues raised in my Interim Decision of March 20, 2019, no other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure* and which was specifically referenced by the parties or their counsel during the hearings. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?

2. Is the Landlord entitled to monetary compensation from the Tenant?

3. Should the Notice be cancelled?

4. Should the Tenant be granted access to the manufactured home site?

5. Should the Landlord be ordered to:

    a. Make repairs to the rental unit?

    b. Provide services or facilities as required by law?

    c. Comply with the *Manufactured Home Park Tenancy Act,* the *Regulations,* or the residential tenancy agreement?

6. Is the Tenant entitled to reduce her rent for the cost of repairs, services or facilities?

7. Should either party recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement between the Landlord and the previous tenants G.W. and K.W. Pursuant to this agreement, the original rent was $325.00 as of August 1, 1994.

Hearing before Arbitrator Stevenson

The parties attended a prior hearing before Arbitrator Stevenson on October 2, 2018 and November 26, 2018. Pursuant to the Decision rendered November 29, 2018, the G.W. and K.W. Tenancy was assigned to the Tenant S.B. Arbitrator Stevenson also found that the rent was $625.00 and credited the Tenant the sum of $100.00 towards the filing fee such that the "first month's rent" was $525.00.

The evidence before Arbitrator Stevenson was that the previous tenant requested to assign his tenancy to S.B. on or about June 10, 2018. The Landlord refused the request by text message.

The current Tenant, S.B., made her Application for Dispute Resolution on August 15, 2018. The matter was originally scheduled for October 2, 2018 and continued on November 26, 2018. On November 29, 2018 Arbitrator Stevenson rendered his Decision finding that the Landlord did not respond as required by the *Manufactured Home Park Tenancy Act* and applied the deemed consent provisions of section 26 of the *Act* such that he found the tenancy had been deemed assigned to S.B.

Current Application

In the hearing before me, the Landlord issued the Notice for non-payment of rent. The Landlord sought an Order of Possession based on the Notice and the Tenant sought an Order canceling the Notice.

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy.

Landlord's Evidence

The Landlord's principal, D.M., testified as follows.

D.M. stated that the last rent payment for the manufactured home site was paid by the previous tenant on July 2018, following which no rent has been paid. As a result, the Landlord issued the Notice on December 28, 2018. The Notice indicated that the sum of $3,125.00 was owed as of December 1, 2018.

D.M. confirmed that the Tenant has not moved onto the manufactured home site.

D.M. testified that she became aware that the previous tenants moved the original manufactured home on or about July 13, 2018. She confirmed that earlier, in December of 2017, the previous tenant mentioned that might move the original manufactured home to a different location at some point, although he did not do so until the following summer, and did so without making the appropriate arrangements for such a move. She said that she became aware of the move as on July 13, 2018, one of the Landlord's employees called her to say that the manufactured home was being moved. She further stated that she lives approximately 45 minutes to an hour away and by the time she arrived the manufactured home had been moved to a neighbouring property.

D.M. further testified that after the previous tenant removed his manufactured home in July of 2018, the Landlord had no contact with the previous tenant until he appeared as a witness on behalf of the S.B. at the hearing before Arbitrator Stevenson. She also stated that costs related to his unexpected move have yet to be resolved.

D.M. confirmed that at no time between July 13, 2018 and November 29, 2018 did the previous tenant, K.W., or S.B. take any steps to move a new manufactured home on site.

Documentary evidence submitted by the parties confirms that an issue arose between the parties in relation to the manufactured home site's septic system. In this respect, D.M. testified as follows. She stated that to her knowledge the park was created in the 1970's and contains 26 manufactured home park sites. She further stated that to her knowledge four sites at the park, have a twinned septic systems, such that two sites share one tank; including the subject rental unit, A1 which shares a tank with A2 and two other sites in the A section. D.M. confirmed that it was her understanding that

current *Building Code* requirements require that each manufactured home must have its own septic tank.

In terms of servicing, D.M. stated that while septic systems can be left for five years, all the systems in the park are cleaned out every 2-3 years. In terms of the lifespan of a septic tank, she stated that it depends on how well it is maintained.

D.M. stated that she has worked at the manufactured home park since 2004, save and except for a leave of absence during 2015 to 2018. She further noted that the previous tenant, K.W., was a tenant for 10 years prior to D.M. working at the park. D.M. stated that at some point in time during those years she became aware that A1 and A2 shared a septic system. D.M. confirmed that she spoke to the previous tenant, K.W., and he confirmed that he was also aware of the shared septic system. She said that in April of 2015 there was work done on the system and K.W. signed a document at that time confirming that he was aware of this. (That document was not provided in evidence before me.)

D.M. stated that she did not discuss with the previous tenant the implications of replacing the manufactured home with respect to the septic system, although she did remind him about the "Park Rules" with respect to any alterations, including removing the unit. In this respect, D.M. brought my attention the following section of the Park Rules which were provided in evidence:

> 5. Any additions or alterations to the manufactured home or construction of outbuildings require a building permit from the [name and phone number of Regional District withheld] and the written permission of the Landlord before commencement of any work. No alternations or changes by the tenant to the site's ground level are permitted. Removing or adding of fences, sidewalks, shrubs and trees on the site requires the prior written permission of the Landlord. Any authorized additions or alterations will be removed at the expense of the tenant. Any additions or alterations that impede the maintenance of the site will be removed at the expense of the tenant.

D.M. testified that she reminded the previous tenant about this when they discussed this in person in December of 2017, although she did not have the Park Rules with her at the time.

D.M. confirmed that she did not have any discussions with the previous tenant about the septic system in regards to his intention to sell his manufactured home to S.B., although on July 13, 2018 when he unexpectedly moved the manufactured home, she spoke to him and he stated that he had to remove it based on the contract he had with S.B. At

this time, D.M. reminded him of the Park Rules and that he needed to make this move *after* making prior arrangements with the Landlord.

D.M. confirmed that she first had contact with the subject Tenant, S.B. in April of 2018 as it was at that time she applied to be a tenant of the manufactured home park.

D.M. stated that on May 19, 2018 her father, A.M., faxed to S.B.'s realtor, A.P. a copy of the "Application for Tenancy", a new residential tenancy agreement between S.B. and the Landlord including the "Agreement for Transferring Ownership for Site Improvements" "Oil Tank Agreement", "Pet Agreement", and "Park Rules".
D.M. also stated that her father also sent a fax to the Tenant's realtor on May 28, 2018 which included a cover letter, an "Application for Authorization to Build or Construct", "the Park Regulations for Requesting Approval for Site Improvements" "Authorization for Site Improvement Form", and "[Name of Regional District withheld] Application for Permit".

D.M. recalled that the Tenant's realtor had stated to A.M. that they may be purchasing a new manufactured home. D.M. was not present but stated that she did not believe that there was any communication to S.B. about the fact that this site was unique in that it shared a septic system with A2. D.M. stated that although she was not part of the discussions she assumed S.B. was aware of the twinning of the septic system because the previous tenant was aware and would have informed her when she sought to purchase his manufactured home.

D.M. stated that she then personally had a discussion with the realtor and S.B. on July 18, 2018 at which time they raised the issue of the septic system, thus confirming their awareness of the issue. D.M. noted that at that time the Tenant was a "prospective tenant" as the Landlord had not consented to her being a tenant, and the Arbitrator had not made the Decision that the Landlord was deemed to have provided consent pursuant to section 46 of the *Act.* She stated that the reason for sending all these documents in advance was to ensure that S.B. was also aware of the requirements for any person (existing or new tenant) to put a new manufactured home on the site.

D.M. stated that the Landlord has not advertised this manufactured home site to anyone else because this matter has been in dispute before the Residential Tenancy Branch.

D.M. confirmed that to date they have not received any information from S.B. as to what she intends to do with the site as she has not submitted any plans for the Landlord's consideration.

D.M. stated that it was not fair to assume that the Landlord would need to put in another septic tank as until an application is made to the Regional District, she does not know what is required. D.M. also stated that the four sites which share septic tanks are all the original manufactured homes from the 1970s such that she has no idea if they need a new septic tank, or if they will be able to attach to the existing one. She stated that was the whole point of all of the faxes and the documentation provided by her father to S.B. and her realtor, to ensure they followed the necessary steps so that this information could be obtained, as until they applied, they really didn't know what was required. She further stated that the real problem is that none of the documentation has been completed by S.B. D.M. confirmed that she has not received any plans from the Tenant as to what she intends to do with the site nor has she received any confirmation from the Tenant that she has applied for any building permit with the Regional District.

S.B. also testified that in April 2015 there were upgrades made to the A1 and A2 system at a cost of $16,000.00. She stated that the fields were expanded, the tank was certified, and it was registered to the Regional District. .

D.M. confirmed that as of July 1, 2018, she did not receive any complaints from the previous tenant, or the occupant in A2 as to the functioning of the septic system such that as far as they knew the septic system was functioning properly.

Tenant's Evidence

The Tenant testified that she applied for tenancy at the manufactured home park in May of 2018, at which time she filled in all the forms at that time. The Tenant stated that when she applied for tenancy at the park, there were a few issues, such as that she had too many dogs.
(Copies of those completed forms were not provided in evidence.)

The Tenant confirmed that it was always her intention to purchase the manufactured home from the previous tenant with the arrangement was that she would purchase it and he would remove it from the site.

The Tenant testified that she put in "her application" in May and "waited the 10 days", as she was informed that after 10 days if she didn't hear anything "the tenancy would be [hers]".

The Tenant further testified that she was first informed that the septic system for A1 and A2 was shared on July 18, 2018. She confirmed that D.M., the Landlord's office manager, the Tenant's real estate agent, and the Tenant were in attendance at the meeting where this was discussed.

The Tenant confirmed that her deal with the previous tenant closed some time the week before (July 8-14). She claimed that when she had discussions with the previous tenant she did not have any discussions with him about the status of the septic system. She noted that that she had never resided in a manufactured home park prior to her attempts to move into the subject park.

The Tenant confirmed that she received the documents listed by the Landlord (the "Application for Tenancy", a new residential tenancy agreement between S.B. and the Landlord including the "Agreement for Transferring Ownership for Site Improvements" "Oil Tank Agreement", "Pet Agreement", and "Park Rules", the "Application for Authorization to Build or Construct", "the Park Regulations for Requesting Approval for Site Improvements" "Authorization for Site Improvement Form", and "[Name of Regional District withheld] Application for Permit" on May 19, 2018 and May 28, 2018 respectively.

In terms of why she has not taken any steps to move into the park the Tenant stated that the Landlord refused her rent. The Tenant stated that during the week before July 18, 2018, she brought in three cheques for pad rental to the office and she was informed by the office manager that her cheques would not be accepted and she could not move her manufactured home onto the pad.

The Tenant stated that during the meeting on July 18, 2018 she offered the cheques again. She stated that D.M. advised the Tenant that she could not move her manufactured home onto the site because "there was a problem with the septic and the Landlord was not willing to pay $30,000-40,000 to fix it". The Tenant claimed the Landlord did not tell her what the problem was or explain it in any way.

The Tenant again stated that she filled out all the forms that were provided in May of 2018. She further stated that she filled them out with A.M. at the time and he took a copy with him.

The Tenant stated that nothing happened between the July 18, 2018 meeting and the time she made her application to the Residential Tenancy Branch on August 15, 2018.

The Tenant confirmed that she also did not make any other attempts to pay the rent for August, September and October 2018.

The Tenant stated that nothing happened between August 15, 2018 and October 2, 2018 save and except for the exchange of evidence in preparation for the hearing on October 2, 2018. She claimed that she had no way of contacting D.M. directly.

The Tenant confirmed that she was aware that work was done on the septic system in April of 2015, but not that it was "certified".

The Tenant confirmed that the issue of the septic system was brought up at the hearing before Arbitrator Stevenson. She stated that she did not appreciate that the septic issues were going to be such a hurdle.

The Tenant claimed that she had no access to the site and therefore could not build or take any steps to move onto the site.

The Tenant's counsel drew the Tenant's attention to a January 29, 2019 letter from the Landlord's counsel in which they wrote:

> However, before your client expends any further time or expense on this project, she may wish to consider the fact that regulatory approval to the proposed improvements may well be refused without significant upgrading to the septic system servicing this pad. The septic service to the prior manufactured home functioned perfectly well and approval to the continued use of it was grandfathered. We suggest that the landlord would be perfectly within its contractual rights to decline permission to an improvement that requires significant expenditure-triggered by the removal of the prior improvements unless the tenant was to propose reimbursing this cost. Recall that the arbitrator ruled that services as per the prior tenancy agreement are to be provided, not new services triggered by possible improvements that your client has yet to propose.

The Tenant said that she did not make any permit applications or enquiries because she understood, from this letter, that even if she did find out what the problem was, the Landlord may refuse her request.

The Tenant stated that she found out that the November 29, 2018 Decision of Arbitrator Stevenson was in her favour on January 3, 2019. The Tenant confirmed that she received the Decision with a letter from the Landlord's representative, D.M. which informed her that she owed rent since July 2018. The letter also included the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on December 28, 2018.

(Notably, a review of Branch records confirms that Decision was “re-emailed” as of January 8, 2019.) The Tenant confirmed that she has not paid rent since receiving the Decision.

When the hearing reconvened on May 7, 2019 the Tenant continued her testimony and confirmed that she had her realtor, A.P. “go to different organizations to try to find permits”. She also stated that she went to “Health Canada” and they could not find any sewage permits at any time. The Tenant stated that she then made contact with the Regional District, was then sent to some other branch of the government to “deal with sewage and environmental” and then sent back to the Regional District. She confirmed that all of the above steps started in April of 2019, a month after the first hearing date.

Tenant’s Evidence in Cross Examination

In cross examination the Tenant confirmed that she did not make any enquiries with the Regional District or the local health authority prior to the May 7, 2019 hearing. The Tenant also confirmed that prior to May of 2019 she had not made any applications with respect to the septic system and she had not made any applications for a building permit. The Tenant also confirmed that she has not provided any drawings or specifications as to what she intends to install on the manufactured pad.

In cross examination, the Tenant also confirmed that she had completed the application package for tenancy in May of 2018 but did not send it because she did not have any “dates”. She further confirmed that she did not in fact complete an “Application for Authorization to Build/Construct”.

Redirect of Tenant

In redirect, the Tenant stated that she filled out her application for tenancy in July of 2018, the day she also tried to pay rent. She then stated that “everything kind of stopped at that point and she stuck with her real estate agent in terms of Arbitration”.

The Tenant stated that she remains confused as to whether or not she is a tenant. She also stated that although she received the Decision, she still hasn’t done anything because shortly after that she received a 10 Day Notice to End Tenancy from the Landlord. The Tenant confirmed that she understands that if she does not pay the rent she no longer has a tenancy.

The Tenant reiterated that she did not complete the application for tenancy because she does not have all the information needed, does not have all the information in terms of the septic and she believes that it would be turned down for being incomplete.

Analysis

After consideration of the testimony and evidence before me I find as follows:

Pursuant to the Decision of Arbitrator Stevenson the tenancy was assigned as of July 2018. As such, the Tenant inherited the rights and responsibilities pursuant to the tenancy agreement with the previous tenants. Arbitrator Stevenson also found that monthly rent was $625.00 per month.

The undisputed evidence was that there has been no rent paid since July 2018.

As counsel for the Landlord appropriately noted, there is nothing in Arbitrator Stevenson's Decision which references an abatement of rent.

The Tenant claims that she was not informed of Arbitrator Stevenson's Decision until January 2019 when she received it from the Landlord's counsel. Branch records indicate the Decision was re-sent to her on January 8, 2019.

I find it reasonable that the Tenant did not pay rent until receipt of the Stevenson Decision as until that time she was unaware of her status as a tenant. I also find it reasonable that the Landlord did not accept her rent prior to that date, again, as her status as a tenant was unclear. However, the undisputed evidence is that once informed she was successful in assuming the tenancy, the Tenant failed to pay rent.

Section 20(1) of the *Manufactured Home Park Tenancy Act* provides as follows:

> **20** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the Tenant breached the tenancy agreement and section 20 by failing to pay rent in the amount of $625.00 per month. I further find that she did not have a legal right under the *Act* to withhold rent.

The Tenant's counsel submits that the Landlord failed to provide services or facilities as required by law. I find the Tenant has failed to submit sufficient evidence to support such a finding. While there remains a possibility that improvements to the septic system

may be required, there is insufficient evidence to support a finding that they are *in fact necessary.*

Counsel for the Tenant stated that “until somebody figures out whether the septic will be approved, the Tenant can’t complete the form.” And that “it should be the Landlord who makes these enquiries pursuant to the Order of Arbitrator Stevenson.”

I disagree.

The undisputed evidence was that the parties discussed the septic tank issue during the meeting on July 18, 2018. Counsel for the Tenant submitted that the Tenant was told in the meeting that there would have to be substantial upgrades to the septic system before any time of mobile home could be moved onto the site. The Landlord denied such statements were made, and stated that the Tenant was informed of *potential* issues with the septic system.

Counsel also submitted that the Tenant was not informed of the septic tank issues prior to entering the contract of purchase and sale with the previous tenant; be that as it may, issues related to the adequacy of the previous tenant’s/seller’s disclosure, and the Tenant/purchaser’s due diligence with respect to the sale are not within my jurisdiction, nor are they relevant to the issues between the Landlord and the Tenant.

As the tenancy was assigned, in addition to the obligation to pay rent, the Tenant also assumed a responsibility to adhere to the Park Rules. Pursuant to those Rules, the Tenant was required to seek a building permit from the Regional District, and submit plans to the Landlord for consideration.

I agree with counsel for the Landlord that as of the date of receipt of the Stevenson Decision, the Tenant knew, or ought to have known she was a tenant and obligated to complete the application process (by completing the documents which had been provided to her in May of 2018), obtain the required permits and submit this information as well as a building proposal to the Landlord.

These requirements were clearly set out in the letter from the Landlord’s counsel to the Tenant’s counsel on December 22, 2018. As aptly put by the Landlord’s counsel, the Tenant had two obligations, since receiving the Stevenson Decision, and that was: (1) to pay rent, and, (2) if she wanted to construct improvements, put together a package for the Landlord’s consideration. Although her evidence was inconsistent on this point, I find that she did neither.

Although the Landlord's counsel alerted the Tenant's counsel to a *potential* problem with hooking up a new manufactured home to the septic system, the extent of that potential problem remained unknown up to and including the final day of hearing on May 17, 2019, a year after the Tenant applied to be a tenant of the manufactured home park.

The evidence confirms that the Tenant did not apply for a building permit, or make any necessary enquiries, until *after* the first day of the hearing of these applications on March 8, 2019.

While the twinning of the septic system between the subject site, A1 and the adjoining site A2 *may* have prevented the granting of a building permit, until an application for a building permit was made, this remains unknown. Just as it is possible that significant work would have been required to accommodate a new manufactured home, it is equally possible the would have received the building permit and moved her new manufactured home onto the site and hooked up to the existing system without any upgrades or improvements. The simple fact is that the Tenant failed to take reasonable steps to apply for a building permit as required by the Park Rules such that the extent of the septic issues remains unknown. The Tenant also failed to submit any plans for consideration by the Landlord as required by the Park Rules.

In all the circumstances I find the Tenant had no legal authority to withhold rent and as such, the tenancy should end pursuant to the Notice. I therefore dismiss the Tenant's Application to cancel the Notice and grant the Landlord's request for an Order of Possession pursuant to section 48 of the *Manufactured Home Park Tenancy Act.*

I also find that the Landlord is entitled to unpaid rent for January – June 2019 in the amount of $3,650.00 (as the first month's rent was to be reduced by $100.00 pursuant to the Stevenson Decision).

Having ended the tenancy, I find the Tenant's request for the following relief is moot and therefore dismissed without leave to reapply:

- an order allowing the Tenant or the Tenant's guests access to the manufactured home site;
- an Order that the landlord:
    - comply with the *Manufactured Home Park Tenancy Act,* the *Manufactured Home Park Regulation,* and/or the residential tenancy agreement;

- provide services or facilities as required by law; and
- make repairs to the manufactured home park tenancy site.

As discussed during the hearing, and as aptly argued by counsel for the Tenant, any claim for damages relating to the removal of the manufactured home by the previous tenant is not related to this tenant. As such, I dismiss this portion of the Landlord's claim.

Conclusion

The Landlord's Application for an Order of Possession pursuant to the Notice is granted. This Order shall be effective two days after service on the Tenant. The Order may be filed and enforced in the B.C. Supreme Court.

The Landlord's Application for monetary compensation for recovery of the filing fee, as well monetary compensation for unpaid rent from January 2019 to June 2019 is granted. In furtherance of this the Landlord is granted a Monetary Order in the amount of **$3,750.00.00.** This Order must also be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

The Landlord's Application for monetary compensation from the Tenant for damages incurred as a result of the previous tenant moving the original manufactured home are dismissed.

The Tenant's Application is dismissed in its entirety.

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*.

I acknowledge that this Decision is being rendered beyond the 30 days provided for in section 70(1)(d) of the *Manufactured Home Park Tenancy Act.* I confirm that pursuant to section 70(2) this does not affect my authority or the validity of this my Decision.

Dated: June 19, 2019

Residential Tenancy Branch