Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenants: CNC LRE LAT FFT
Landlord: OPC FFL

Introduction

This hearing dealt with the applications from both the tenant and the landlord pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*).

The tenant applied for:

- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 63 of the *Act*; and
- the recovery of the filing fee for this application from the landlord pursuant to section 65 of the *Act*.

The landlord applied for:

- an Order of Possession pursuant to section 48 of the *Act*;
- an Order for the tenant to comply with the Act, regulations or tenancy agreement pursuant to section 55 of the *Act*; and
- the recovery of the filing fee for this application from the tenants pursuant to section 65 of the *Act*.

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

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package and submitted evidence materials, however the landlord disputed receipt of the tenant's Application to amend his original Application for Dispute Resolution to include a dispute of the landlord's Notice to End Tenancy. The tenant confirmed that it is possible he failed to include it with the information served on the landlord as he thought it would be

included in the materials provided by the Residential Tenancy Branch. I explained to the tenant that it is the tenant's responsibility to serve the respondent with the Amendment application. This is clearly set out in the Residential Tenancy Branch Rules of Procedure, as follows:

> 4.6 Serving an Amendment to an Application for Dispute Resolution
> As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.
>
> The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.
>
> In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

As the tenant failed to serve the landlord with the Amendment application, I decline to amend the tenant's application to include his request to dispute the landlord's Notice to End Tenancy.

The tenant confirmed receipt of the landlord's Notice of Dispute Resolution Proceeding package and submitted evidence materials.

Therefore, based on the testimony of the parties, I find that the all the documents served for this matter were sufficiently served for the purposes of this hearing with the exception of the tenant's Amendment application.

Preliminary Issue – Procedural Matters

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 form and content requirements of section 45 of the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession.

Should the landlord's access to the site be suspended or restricted?

Should the tenant be ordered to comply with the *Act*, regulations or tenancy agreement?

Is either party entitled to recover the cost of the filing fee for this application from the other party?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy, signed by both parties on September 16, 2017, was submitted into evidence. The parties confirmed that the tenancy agreement stated that this tenancy began October 1, 2017 and that monthly site rent of $250.00 is payable on the first of the month. The landlord confirmed that the tenancy agreement did not include the boundaries of the manufactured home site measured from a fixed point of reference, as this had never been determined.

The landlord testified that they sought an order for the tenant to comply with the park rules pertaining to an ATV stored in a trailer in the tenant's carport, and for the tenant to comply with not parking his camper on the road for longer than one day to load and to unload as the landlord claimed the tenant had previously on one occasion left his camper parked on the road for five days. The relevant terms of the tenancy agreement are provided below:

17. *No mini bikes, snowmobiles or all terrain vehicles or other unlicensed vehicles are to be operated or stored in the park. The compound is for storing tenent vehicles only that are being used and that are insured annually. Owners are not responsible for lost or stolen items with in the park or compound.*

18. *Tenants are restricted to a maximum of two vehicles unless permission is granted by the Landlord. Broken down or un-roadworthy vehicles are not to be stored in the park or compound. Major mechanical work or repairs on vehicles are not to undertaken in the park. No parking on the road at anytime for tenants and guests.*

The tenant testified that he interprets term 17 as only applying to all terrain vehicles that are unlicensed. The tenant testified that his ATVs are licensed and therefore, he claimed term 17 is not applicable to him. Further, the tenant only has one ATV stored in a trailer on his site as the other is stored at his brother's place. The tenant testified that he has had at least one ATV at his site since the beginning of his tenancy. The tenant did not receive a written warning regarding any non-compliance pertaining to the storage of the ATV until August 2018, approximately one year after the start of the tenancy.

The tenant acknowledged that he had left his camper parked on the road for a period of several days on one occasion and agreed not to do that again. However, the landlord recently changed the lock on the storage compound and this may impact the tenant's ability to store his trailer in the compound as required.

The tenant applied for an order restricting or suspending the landlord's access to the site. The tenant testified that the landlord had entered his property by walking in the driveway on one occasion when the landlord thought the tenant was not at home. The tenant referenced a photograph submitted into evidence dated 2018, showing a person whom the tenant alleged to be the landlord walking in the driveway.

The landlord sought an Order of Possession on the basis of an undisputed notice to end tenancy. The tenant confirmed receipt of the notice on September 5, 2019. The tenant testified that he applied to amend his original application on September 9, 2019 to include a request to cancel the notice, however the tenant failed to serve the amendment on the landlord, and as such, the landlord would have been unaware of the tenant's dispute and proceeded to apply for an Order of Possession on the basis of the notice.

Analysis

1) Order of Possession

Section 40 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In this matter, the tenant received the notice to end tenancy from the landlord on September 5, 2019, and filed an application to amend his existing dispute application to include a dispute to cancel the notice on September 9, 2019. However, the tenant failed to serve the amendment application to the landlord and therefore I find that the tenant's application to dispute the notice is dismissed. As such, I must determine if the landlord is entitled to an Order of Possession on the basis of the notice pursuant to section 48 of the *Act*, which provides as follows:

48 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if

(a) the landlord's notice to end tenancy complies with section 45 [*form and content of notice to end tenancy*], and
(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

After reviewing the notice to end tenancy submitted into evidence, I find that the notice does not meet the requirements for form and content as set out in section 45 of the *Act* as it is not in the approved form.

In this matter, the landlord has used an old version of the One Month Notice to End Tenancy Form dated from January 1998 and therefore it does not include information required on the current, approved version of the form (RTB-33), such as the correct legislation section references as the relevant sections pertaining to ending a tenancy for cause have changed in the intervening years.

As such, I find that landlord's notice to end tenancy does not meet the requirements of section 45 of the *Act*, and therefore the landlord cannot obtain an Order of Possession on the basis of the Notice. I find the landlord's application for an Order of Possession dismissed.

2) Landlord's request for tenant to comply with tenancy agreement

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to so, a claimant must present sufficient evidence at the hearing in support of their claim to meet this standard of proof.

During the hearing, the parties discussed the issue of the tenant parking his camper for several days on the road, in contravention of term 18 of the tenancy agreement. The parties discussed the issue and the landlord clarified that tenants are allowed to have the camper parked for only a day to load and a day to unload. The parties confirmed that the tenant will store his camper in the compound when not in use, and the landlord will provide the tenant with access to the compound for this purpose.

Therefore, I caution the tenant to abide by the clear term in the tenancy agreement that parking campers on the roadway is not permitted, except clarified by the landlord that it is permitted for one day to load and one day to unload.

Regarding the issue of the ATVs, I refer to section 6 of the *Act*, which sets out that a term of a tenancy agreement is not enforceable if:

(a) the term is inconsistent with this Act or the regulations,
(b) the term is unconscionable, or
(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

As it is the landlord's application for an order that the tenant comply with the term of the tenancy agreement, the landlord bears the burden to establish that the term is clearly expressed and communicated. In this matter, I find that the tenant began storing his ATVs at his site from the beginning of his tenancy, and it was not until almost one year into the tenancy that he received written notification from the landlord that this was a contravention of the tenancy term. Further, I find that the wording of term 17, through the use of the word "other" in the phrase "or *other* unlicensed vehicles" lends to ambiguity in the interpretation as to whether an unlicensed as opposed to licensed ATV is prohibited.

"Contra Proferentem" is a Latin term meaning "against the offeror", which is a legal doctrine of contractual interpretation. It provides that where a term of a contract or

agreement is ambiguous, the preferred meaning should be the one that works against the interests of the party which provided the wording. This doctrine is most applicable to situations involving agreements between parties where there is an unequal bargaining power, such as landlord-tenant relationships.

As such, in accordance with section 6 of the *Act*, and the "contra proferentem" doctrine, I find that the landlord has not met the burden of proving their claim, and as such, the request for an order for the tenant to comply with term 17 of the tenancy agreement is dismissed.

3) Tenant's request to restrict or suspend landlord's access to site

Section 63 of the *Act* provides that a landlord's right to enter the manufactured home site may be suspended or have conditions set, if there is sufficient evidence that a landlord is likely to enter a manufactured home site other than as authorized under section 23 of the *Act*.

The tenant provided only one example of someone alleged to be the landlord walking on the tenant's driveway at some point in 2018. I do not find sufficient evidence of concern of a pattern of incidents of the landlord accessing the tenant's site beyond the allowances set out in section 23 of the *Act* and as such I do not find it likely that the landlord will enter the site other than authorized under section 23 of the *Act*. However, I caution the landlord to ensure he is familiar with section 23 of the Act and abides by the provisions of section 23 of the *Act*, which sets out the following:

Landlord's right to enter manufactured home site restricted

23 A landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i)the purpose for entering, which must be reasonable;

(ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c)the landlord has an order of the director authorizing the entry;

(d)the tenant has abandoned the site;

(e)an emergency exists and the entry is necessary to protect life or property;

(f)the entry is for the purpose of collecting rent or giving or serving a document that under this Act must be given or served.

As both parties brought forward claims seeking to recover the cost of the filing fee, and neither party received an order as a result of this dispute, I find that neither party is entitled to recover the cost of their filing fee from the other. As such, each party must bear the cost of their own filing fee.

Conclusion

Both applications are dismissed, and the parties must bear the costs of their own filing fees.

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: October 30, 2019

Residential Tenancy Branch