Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPL MNR
Tenant: CNL RR RP MNDC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on October 18, 2019.

All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

On the Tenants` application, they listed the Landlord as P.S., who was present for the hearing. I note that K.M. filed her own application, and listed herself as the Landlord (which was crossed with the Tenant`s application, and scheduled to be heard at the same time). I also note that K.M. was listed as the Landlord on the Notice to End Tenancy. Both P.S. and K.M. were present at the hearing, and both had appointed the same lawyer, J.C., to represent them. In the hearing, J.C. stated that P.S. owns the land on which the mobile home exists, and K.M. bought the mobile home, and now rents the mobile home pad from P.S. J.C. argued that this now makes K.M. the Landlord under the Residential Tenancy Act (the Act). I find it important to note the following portion of the Act:

> **64** (3)Subject to the rules of procedure established under section 9
>
> (3) *[director's powers and duties]*, the director may
>
> (a)deal with any procedural issue that arises,
>
> (b)make interim or temporary orders, and
>
> (c)amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Although the Tenants named P.S. as the Landlord on their application, I hereby amend the Tenants' application pursuant to section 64(3) of the Act, to include K.M. as the Landlord, as there is evidence to suggest she bought the property, and is the new Landlord under the Residential Tenancy Act. This issue will be further addressed below.

I note that K.M. and P.S., along with their legal counsel, had knowledge of the hearing, and the issues to be discussed. All 3 of them were present and ready to proceed with the application. As such, I find it is not prejudicial for the Tenants' application to be amended to reflect the names of both K.M. and P.S. for the purposes of my determination regarding the Notice to End Tenancy and for the proceedings. Counsel for the Landlords confirmed that the Tenants' application and evidence was received, and they had a chance to review it. I find the Tenants sufficiently served the Landlords with their application and evidence.

Since this is a cross application, I find it important to note that both parties are applicants and both parties are respondents. According to Rule 3.15, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. Although the Landlords took issue with getting the last of the Tenants' evidence on October 11, 2019, I find it was sufficiently served in accordance with the rules of procedure, as they were acting as the respondent as well as the applicant, which allows them to serve evidence up to 7 days prior to the hearing. In summary, I find the Tenants sufficiently served their application and evidence to the Landlords for the purposes of the Act.

The Tenants confirmed receipt of the Landlords' Notice of Hearing and application. The Tenants did not take issue with the service of this package and were ready to proceed with the Landlords' cross application. The Landlords sent the Tenants the evidence in a second package, by registered mail on October 4, 2019. The Tenants stated they did not get this package by mail. The Landlords stated that they also sent it by email to the Tenants. The Tenants confirmed they received this email, including all the evidence, on October 8, 2019, and were able to open, read it and respond to it. The Tenants did not take issue with the service of this documentation, and were ready to proceed to discuss it. I find the Tenants were sufficiently served with the Landlord`s evidence and application.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matter #1

Both parties applied for multiple remedies under the *Act* a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in both applications deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on both applications with the exception of the following ground:

- to cancel a 2-Month Notice to End Tenancy for Landlord's use of the property (the "Notice").

Preliminary and Procedural Matter #2

The hearing was scheduled for one hour. The Landlords presented their reasons as to why the tenancy should end, and they were given approximately 30 minutes to speak. The Tenants were given over 45 minutes to respond. The Tenants were repeatedly reminded to not make personal character attacks on the Landlords, and to stay on point. The Tenants were repeatedly reminded that they were only to discuss evidence as it related to the Notice. The Tenants were also reminded that it was not necessary to repeat opinions and facts which they had already mentioned. I warned the Tenants multiple times to stop repeating statements, in an attempt to be more efficient with hearing time. The Tenants asked for an adjournment at the one hour mark, after I mentioned that the hearing was out of time.

Rule of Procedure7.9 provides guidance when considering applications to adjourn a hearing. It states:

> *Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*
>
> - *the oral or written submissions of the parties;*
> - *the likelihood of the adjournment resulting in a resolution;*
> - *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
> - *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
> - *the possible prejudice to each party.*
>
> [Reproduced as written.]

In this case, after considering the factors listed above, I note that the Tenants contributed to the lack of time by continually repeating statements already made. I also note the owner of the property, P.S., had a significant health event earlier in the year, and K.M. stated she is wanting to move into the rental unit to be closer to P.S., but this move is contingent upon this Notice being upheld. I find there is potential prejudice to the Landlord if an adjournment is granted, as it could substantially delay the proceedings. The Landlords stated they require an order of possession to help care for the owner of the property, P.S. Further, given how the Tenants were repeating themselves by the end of the hearing, I find that an adjournment is not likely to result in a better, more fair resolution, as I already had enough information to make a decision by the time the hearing time was up. After hearing from both parties, I informed the Tenants that I would not be granting an adjournment. Rather, I let the Tenant speak for an additional 15-20 minutes, beyond the allotted hearing time in an attempt to give more time to say what they felt was relevant.

Issues(s) to be Decided

- Are the Tenants entitled to have the Landlords' Notice cancelled?
    - If not, are the Landlords entitled to an Order of Possession?

Background and Evidence

The Tenancy Agreement provided into evidence indicates that the parties agreed to a 10 year fixed term tenancy agreement starting May 1, 2012 and expiring April 30, 2022. Monthly rent was set at $750.00 per month (fixed) and is due on the first of each month.

The Tenants acknowledged receiving the Notice on July 30, 2019. The Notice has an effective date of September 30, 2019. The Tenants filed their application with the office to cancel the Notice on August 14, 2019. There was a delay in our office preparing the Notice of Hearing, and the Notice of Hearing was not made available until August 23, 2019. The Landlords pointed to this, and argued that the Notice of Hearing was dated August 23, 2019, which means the application was beyond the allowable 15 day window, which means it should be dismissed.

During the hearing, I explained that an application is considered to be made once the completed application is received by our branch, and the fee is paid. As this occurred within the 15 days allowable for this type of Notice, I explained that the Tenants' application to cancel the Notice was not late. The delay referred to by the Landlords was caused by our office, and the Tenants will not be penalized for this.

The Landlords issued the Notice for the following reason:

> *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

In the hearing, counsel for the Landlords, stated that K.M. bought the mobile home from the owner of the property, P.S. Counsel for the Landlords stated as follows:

- K.M., over the past few months, decided that she would buy the mobile home from P.S.
- K.M. bought the mobile home on July 29, 2019, and paid $1,000.00 for this unit.
- The mobile home unit is decades old, and as such, there is no requirement for it to be listed or registered, and P.S. is still listed as the owner of the property because K.M. only bought the mobile home (rents the manufactured home pad from P.S.).
- A bill of sale, signed by the seller (P.S), as well as the buyer, K.M., was provided into evidence. A witness was also present to sign the document on July 29, 2019. P.S. also issued K.M. a receipt showing he received $1,000.00 on July 29, 2019.
- K.M. issued the Notice on July 30, 2019, so that she could move in, and be closer to the owner of the park, P.S., to help with his health issues.

The Tenants stated that they believe this whole situation is fraudulent. The Tenants believe that K.M. is a thief, a con artist, a drug user, a prostitute and a bad person. The Tenants explained that they used to help manage the home park for the owner, P.S., but the situation changed over the last few months. The Tenants stated that they believe that P.S. is trying to circumvent the Act, and have them evicted. The Tenants stated that their tenancy agreement is with P.S. so he is the one who their dispute should be with. The Tenants assert that the sale never completed, and the paperwork is forged so that they could do this eviction. The Tenants went to great lengths in the hearing to discuss the poor character of K.M. The Tenants also feel P.S. is being taken advantage of at a time when he is vulnerable due to his health challenges. The Tenants also explained that there have been many meetings and discussions regarding P.S.'s last will and testament over the past few months. The Tenants feel that they are being unfairly evicted, based on a fraudulent transaction, and because the situation between K.M., P.S., and themselves has become contentious.

The Tenants stated that P.S.'s signature is not the same on these documents (bill of sale/receipt), when compared to documents he has signed in the past (tenancy agreement etc). The Tenants stated they used to help take care of P.S. and are concerned now that K.M. is in the picture. The Tenants also pointed out that the trailer, although older, is worth at least $30,000.00 to $40,000.00, and they do not believe that $1,000.00 is a reasonable purchase price. The Tenants further pointed out that there is no statement of adjustments and other paperwork to substantiate that this was a legitimate transaction. The Tenants feel the Landlords are trying to circumvent the Act.

Analysis

In the matter before me, the Landlords have the onus to prove that the reason in the Notice is valid and that they intend in good faith to occupy the unit.

Based on the evidence and testimony before me, I make the following findings:

Fraud Allegations

I acknowledge that there has been degradation in the relationship between the Landlords (both P.S. and K.M.) and the Tenants. The Tenants' are alleging that the actual Landlord is still P.S. because the transaction whereby he asserts he sold the mobile home to K.M., is fraudulent. I have reviewed the evidence and testimony on this matter, and I acknowledge that the sale price for the mobile home is quite low. However, it is not my duty to determine what fair market value is, or was. I note that P.S. stated he sold the house to K.M. so that she can help him with his duties and help care for him. Although the Tenants feel K.M. is not qualified to help P.S., I find this is beside the point, as he is entitled to employ the help he sees fit. He has an interest in selling the mobile home to K.M. so that she can live close by, within the same park.

Having reviewed the documentation provided, I find the Tenants have not sufficiently demonstrated that this transaction was fraudulent. I further note that the seller, P.S., and the purchaser, K.M., were both present at the hearing, and provided a signed bill of sale, as well as a signed receipt. I note the bill of sale was also signed by a third party witness. The Tenants have pointed to the questionable character of K.M., the lack of formal paperwork and further supporting documentation, the evolving signature of P.S., as evidence that this transaction did not complete. However, I find, on a balance of probabilities that the Tenants have failed to show that this transaction was fraudulent.

I find it more likely than not, based on the evidence before me, that P.S., who *was* the original owner of the manufactured home, and the Landlord, sold the unit to K.M. and completed this transaction on July 29, 2019. As such, I find this makes K.M. the new Landlord as of that date, even though P.S. still owns the manufactured home park (land). I find K.M. was lawfully entitled to issue the Notice on July 30, 2019.

Ultimately, after looking at the totality of the situation before me, I find the explanation from P.S. is reasonable with respect to why he wanted to sell the trailer to K.M. I also find K.M.'s explanation regarding wanting to move into the unit so she can be closer to P.S. is reasonable, given P.S.'s uncontested health challenges. I also note there is supporting documentation, although not to the Tenants' satisfaction, to show the transaction took place, and I find there is sufficient evidence to show the Landlord, K.M., intends in good faith to occupy the rental unit.

I note that under the Act, if the Landlord does not move into the rental unit as set out in the 2-month notice, the Tenants would be entitled to compensation as follows:

Section 51 of the Act reads,

> …
>
> (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a)steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b)the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Overall, I find the Landlord has sufficiently supported her reasons to issue the 2-month Notice. The Tenants' application to cancel the 2-month Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2-month Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession. ~~effective 2 days after service, given the effective date of the Notice has already passed.~~

The Notice has an effective date of September 30, 2019. However, pursuant to section 49(2)(a)(iii) and 53(2), this effective date is hereby deemed to be corrected to April 30, 2022 (last day of fixed term tenancy), which is the earliest date the Landlord may end the tenancy with this type of Notice.

As the Tenants were not successful with their application, I dismiss their claim to recover the cost of the filing fee. Pursuant to section 72 of the Act, I award the recovery of the filing fee to the Landlord. The Landlord may retain $100.00 from the Tenants' security deposit.

Conclusion

The Tenants' application to cancel the Notice to End Tenancy dated July 30, 2019, is dismissed. Further, I dismiss the Tenants' request to recover the cost of the filing fee.

~~The Landlord is granted an order of possession effective 2 days after service on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.~~

The Landlord is granted an order of possession effective **April 30, 2022, at 1:00 p.m**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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

Dated: December 3, 2019

Residential Tenancy Branch