Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenants: CNL, RR, RP, MNDC, FF
Landlords: OPL, MNR

Introduction, Preliminary and Procedural Matters-

This dispute arose on the cross applications of the parties, with the tenants' application being filed on or about August 23, 2019, and the landlord's application being filed on or about August 30, 2019.

The tenants applied for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) issued by the landlord and other matters.

The landlord applied for an order of possession for the rental unit pursuant to the Notice and for a monetary order for unpaid rent.

The original hearing on both applications occurred on October 18, 2019, before another arbitrator. On October 21, 2019, the original arbitrator issued a Decision; that original Decision must be read in combination with this Decision.

Briefly, the original arbitrator severed all issues in the respective applications and dealt only with the matter surrounding the validity and/or enforceability of the Notice. The unrelated matters were dismissed, with leave to reapply.

For the reasons provided, the original arbitrator also determined that KM was the sole landlord in this matter, though the tenants only listed PS as landlord.

The subject of the remaining issue of this dispute was the Notice, which showed that KM, on July 30, 2019, served the tenants the Notice, with an effective move-out date of September 30, 2019.

In the original Decision of October 21, 2019, the original arbitrator found the Notice to be valid and enforceable, and as a result, issued the landlord an order of possession of the rental unit, also dated October 21, 2019, effective two (2) days after service of the Order on the tenants.

On December 3, 2019, the original arbitrator issued a Correction of the original Decision. That Correction must be read in conjunction with this Decision.

Briefly, the original arbitrator stated that it had come to his attention that an inadvertent error had been made, noting that a tenancy agreement provided into evidence by the tenants showed a 10-year, fixed term tenancy. The fixed term was from May 1, 2012, ending on April 30, 2022. The original arbitrator stated that he had failed to consider this tenancy agreement and a correction was warranted.

On December 3, 2019, the original arbitrator issued an amended Decision reflecting the findings in the Correction of the same date. The amended Decision must be read in conjunction with the Decision.

Briefly, the amended Decision now mentioned in the Background and Evidence portion that the tenancy was for a 10-year, fixed term, ending on April 30, 2022. The original arbitrator found the Notice to be valid and such, did not change the outcome; however, after consideration of sections 49(2)(a)(iii) and 53(2) of the Act, the corrected effective date on the Notice was changed to April 30, 2022 instead of in two (2) days of service on the tenants. As a result, the amended Decision granted the landlord an order of possession of the rental unit effective on April 30, 2022, at 1:00 p.m.

The original arbitrator also issued a corrected order of possession of the rental unit on December 3, 2019, which changed the effective end of tenancy date to April 30, 2022.

After the original Decision, the tenants filed an application for review consideration; however, the evidence shows that the application was dismissed by a separate arbitrator.

The tenants then filed a Petition to the Supreme Court of British Columbia for relief on November 20, 2019, seeking “an Order changing the Possession date of the Order of Possession issued by Arbitrator C. A. on October 21, 2019 to a date that is beyond the expiry of the fixed term Rental Agreement between DE, BM, and PS, which is April 30, 2022”. (*names anonymized*)

The Petitioner/tenant also applied for an Interim Order staying the Order of Possession until the final disposition of the judicial review.

On December 9, 2019, the parties, tenant, DE, and counsel for PS and KM, signed a Consent Order. In this Consent Order, the application filed by the respondents, PS and KM on December 4, 2019, was dismissed, the matter was to be remitted to the Residential Tenancy Branch (RTB) for reconsideration of the issue of the validity of the long-term tenancy agreement and the Order staying the Order of Possession was to continue until the RTB has rendered a decision on the validity of the long-term agreement.

The present hearing was convened to consider the validity of that long-term rental agreement.

I have therefore determined that as the validity of the long-term tenancy agreement was the only issue, it was not necessary to hear testimony and evidence on any other matters. As a result, I further determined that it was not necessary to consider the merits of the Notice.

Additionally, as another preliminary matter, the parties were notified of this hearing by way of a Notice of Dispute Resolution Hearing, dated February 6, 2020. The parties were informed that the hearing was set for reconsideration before a new arbitrator to resolve the dispute as per the Court's direction on the "sole matter of the long-term rental agreement."

The parties were provided the instructions for calling into the hearing and informed the parties that the arbitrator would be considering the documentation that was before the Court. As such, the parties were informed that they must submit to the RTB all documents they relied upon in the Judicial Review Proceeding and serve them on the other party. Neither party submitted these documents.

I allowed the legal counsel for the landlords to submit those documents after the hearing, as the tenants confirmed they had the documents as well.

I note the legal counsel did provide the documents as requested, after the hearing.

Issue(s) to be Decided

Is the tenancy agreement/rental agreement establishing the written terms of this tenancy valid and enforceable?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the parties' claims and my findings around them are set out below.

The undisputed evidence shows the rental unit is a manufactured home in a manufactured home park, both owned by PS at the time.

In approximately 2009, the tenants moved into the rental unit and began paying rent. There was no evidence of a written tenancy agreement at the beginning of the tenancy.

There was also undisputed evidence that PS sold the rental unit to KM by way of a Bill of Sale, dated July 29, 2019.

As mentioned, KM, as new owner, issued the tenants the Notice as she intended to occupy the home.

The evidence submitted in advance of the original hearing included a one-page document entitled "RENTAL AGREEEMENT" between the tenants, DE and BM and PS.

This was the document in question for this hearing.

This rental agreement indicated the tenancy was for a fixed term of ten (10) years, beginning May 1, 2012 and expiring on April 30, 2022.

Other terms included in the rental agreement indicated that the monthly rent was fixed at $750.00 per month, payable by the 1st day of the month and that the landlord, PS, "hereby guarantees that there shall be no increase in the amount of rent for the term of this agreement".

Another term showed that by prior agreement, deductions may be made from the monthly rent for services provided by the tenants to the landlord and that this agreement

was non-cancellable except by the tenants with a minimum of 30 days written notice to the landlord.

The last term states that the agreement is subject to the laws of the Province of British Columbia.

I note that the tenants did not join the hearing until 5 minutes after it had started. During this time, PS, KM, and the legal counsel indicated their presence. As the tenants were not present, I confirmed with the legal counsel that it was the landlords who challenged the validity of the rental agreement.

When the tenants called into the hearing, they said they had attempted to call in prior to the start time, but were met with busy signals. I accepted the submissions of the tenants.

As the legal counsel, for the landlords, challenged the rental agreement, I proceeded to hear the legal counsel's arguments first.

The legal counsel challenged the tenancy agreement (rental agreement) on two fronts.

The legal counsel argued that the tenancy agreement was fraudulent due to PS' sworn statement that he does not recall signing the document.

PS also said that he had no recollection of the agreement, but did not recall the events of May 1, 2012. PS and other evidence showed that he suffered a stroke in 2019, and required the services of a caregiver, in this case, KM.

The legal counsel further argued that as proof the tenancy agreement was fraudulent, PS' signature on the document does not look like his signature on the Bill of Sale and other documents submitted into evidence.

The legal counsel also submitted that several terms in the tenancy agreement violated the Act and were unconscionable. He cited section 6.3 of the Act that states a term of the tenancy agreement is not enforceable if the term is inconsistent with the Act or Residential Tenancy Regulations or if a term is unconscionable. The legal counsel pointed to section 3 of the Regulations, saying that a term is unconscionable if it is oppressive or grossly unfair to one party.

The legal counsel argued that a tenancy agreement which prevents a landlord from raising the monthly rent during the entire 10-year term or being non-cancellable except by the tenants was grossly unfair and unconscionable. In essence, the amount of the monthly rent the tenants paid would be decreasing every year.

The legal counsel said there was an implied tenancy agreement already in place and questioned why a written tenancy agreement was created.

The legal counsel argued that the tenancy agreement should be taken as a whole and if some terms were unconscionable and grossly unfair, the entire document should be held invalid and unenforceable.

The legal counsel argued that as the tenancy agreement should be held invalid, the original order of possession of the rental unit effective in two (2) days after service of the tenant should be upheld. This was because the original arbitrator determined the Notice to be valid and enforceable.

KM said she looks after PS' health and needs to be living in the rental unit to be near him.

Tenant DE's response-

DE said that the reason they filed a Petition for judicial review in the Supreme Court was to stay the 2-day order of possession, claiming that they should be allowed to remain until the end of the fixed term, or April 30, 2022.

On their way home from the hearing, they stopped by their mailbox and found the Corrected Decision, which did allow the tenancy to continue to that date. DE said he thought the matter was over at that point, as their issue was only the effective date of the end of the tenancy.

The tenant submitted that the legal counsel made these same arguments at the original hearing and were rejected by the arbitrator. DE said the Supreme Court Justice read the original Decision and could not find where the arbitrator referred to the tenancy agreement.

DE pointed out that PS has had health issues and does have memory problems, since his stroke in January 2019.

As a background, DE said that he and PS were long term friends, having been acquainted through years together on the music circuit. DE said he told PS he wanted to stay long enough until it was his time to go live in a seniors' home. DE said he was 65 at the time.

DE said he moved into the rental unit in 2009, and by 2011, he was made park manager, handling the affairs with all the tenants.

DE said he usually went on tour in May through October each year, but in 2012, BM said she wanted a written tenancy agreement. He told BM he could write something up; however, BM said she wanted PS to sign the document.

DE said he never had problems with PS, always helped him and that he witnessed PS signing the tenancy agreement.

DE said there was nothing oppressive about the tenancy agreement, as it was enforceable under the laws of British Columbia, and PS always had the option to enforce his rights.

DE said he has seen many different versions of PS signatures, on the many documents sent into evidence.

Tenant BM's response-

BM said they did not know about the corrected Decision until coming home from the Supreme Court. She thought the issue was now over.

BM said that DE and PS were budding musicians and that PS said he had a place for them to stay.

BM said she did not initially want to move into the rental unit, due to its condition; however, PS said they could stay as long as they wanted and he would never raise the rent. BM said she ultimately decided to move in and over the years, did a lot of work on the rental unit and the lot. BM said she repaired the rental unit, plugging in all the rat holes, landscaped and planted rose bushes.

BM said she had a friend who made a lot of repairs and renovations to the rental unit.

BM said she was always there for PS, lending or giving him anything he wanted after his divorce and moving into the park.

BM said she collected rents while PS was in the hospital.

BM said she asked DE to get a written tenancy agreement so she could have security and peace of mind.

BM said there was always a sense of community in the park and she loved living there, but since KM has been put in charge, she no longer wants to live there.

Analysis

Section 62 (2) of the Act stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act. After careful consideration of the evidence and on a balance of probabilities I find pursuant to section 62(2) of the Act as follows:

Section 1 of the Residential Tenancy Act defines a “tenancy agreement” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 2 states that landlords and tenants may not avoid or contract out of the Act or Regulations, and any attempt to do so is of no effect. In addition to this, section 6 states that any term that is inconsistent with the Act or the regulations or if a term is unconscionable, it is not enforceable.

In considering the submissions of the respective parties, I find there is insufficient evidence to support that PS, the landlord at the time, did not sign the tenancy agreement. I have reviewed the many signatures of PS submitted into evidence and find that they are all similar. I found nothing to call into question the validity of the signature of PS on the written tenancy agreement.

I therefore find on a balance of probabilities, that PS signed the written tenancy agreement (rental agreement), agreeing to the 10-year fixed term.

As to the second point of the legal counsel, I found the tenants' testimony to be forthright, consistent and believable as to the reasons for the long-term tenancy and the set monthly rent.

I accept that PS had a stroke in January 2019, but in speaking with him at the hearing, I found him to be quite clear and understandable in his testimony. I was struck by the fact he did not deny he signed the contract, only that he did not recall doing so in 2012. Further, when having the opportunity for rebuttal to the tenants' submissions, neither the legal counsel or PS denied the events as recounted by the tenants, that the parties were long time friends, that the intent was for a long-term tenancy and that PS said he would never raise the rent.

I find this supports the terms of the written tenancy agreement, to which the landlord signed his agreement.

I therefore find that none of the terms of the written tenancy agreement were unconscionable or oppressive.

While the written tenancy agreement said the landlord may not increase the monthly rent, that term in unenforceable under the Act and is no effect. I do not find this term invalidates the whole agreement, it is simply not enforceable, as a landlord is entitled to increase the monthly rent upon up to the allowable amount and with a proper notice.

Additionally, a landlord is entitled to end a tenancy prior to the end of a fixed term, for the proper reasons. That reason does not include the issuance of a Two Month Notice to End the Tenancy for Landlord's Use. Again, that term does not invalidate the whole tenancy agreement.

I find the evidence shows that the landlord signed the long-term rental agreement and with his own free will.

Due to the above, I find that the long-term rental agreement is valid.

As such, I concur with the original arbitrator's Corrected Order of Possession of the rental unit, which is effective at 1:00 p.m., on April 30, 2022.

Conclusion

I find the long-term rental agreement at issue is valid for the above listed reasons.

I concur with the original arbitrator's Corrected Order of Possession of the rental unit, which is effective at 1:00 p.m., on April 30, 2022.

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: April 20, 2020

Residential Tenancy Branch