Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E.K.Smith Construction Company Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDCT FFT

Introduction

In this dispute, the tenant seeks compensation pursuant to section 60 of the *Manufactured Home Park Tenancy Act* (the "Act"). They also seek recovery of the filing fee pursuant to section 65 of the Act.

A decision dated May 16, 2019 (the "original decision") concerning this dispute was issued by the Residential Tenancy Branch. On application by the tenant and with consent of the landlord, the British Columbia Supreme Court ordered, on March 9, 2020, that the entire original decision be set aside and that the dispute be reheard. This Decision concerns the rehearing which was held before me on July 16, 2020.

At the hearing the tenant, tenant's counsel, the landlord's agent (the "landlord"), and an employee of the landlord (who did not testify, but who appeared to provide assistance in the background) attended the hearing. The hearing commenced at 9:30 AM, recessed briefly about halfway through, and then concluded at 11:38 AM.

The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. In reviewing material submitted by the parties in advance of the hearing, it appeared that the tight, one-hour timeslot ordinarily allotted to these arbitrations presented an issue at the previous hearing; it appeared that the applicant did not have a full opportunity to present their evidence. With this in mind, I explained to the parties that this hearing was scheduled for the entire morning, and that, if necessary, I would adjourn the hearing for additional time. Moreover, I stressed that I did not want either party to feel that they were not given as much time as necessary to present their case. The parties acknowledged and understood this.

Finally, I have only reviewed and considered oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, to which I was referred, and which was relevant to determining the issues of this application. As such, not all of the parties' testimony will necessarily be reproduced below.

Issues

1. Is the tenant entitled to compensation as claimed?
2. Is the tenant entitled to recovery of the filing fee?

Background and Evidence

Tenant's counsel presented the factual background first, before making argument and submissions regarding the law. In reciting the tenant's version of events, I shall below reproduce relevant portions of the tenant's affidavit, which was submitted into evidence and from which counsel drew much of his oral submission.

(As certain portions of the affidavit are not reproduced, the paragraph numbering below will not necessarily match that of the numbering in the affidavit.)

1. I [the tenant] am the executrix for the estate of my mother [the original tenant]. On October 30, 2012 my mother signed a tenancy agreement for rental of a mobile home pad located at [redacted].

A copy of the Manufactured Home Site Tenancy Agreement (the "Agreement") was submitted into evidence. I note that on page 4 of the agreement is clause 4 ("Sale of Home:") which states the following:

> The Tenant may sell his/their home at any time. However, if the prospective Purchaser intends for the home to remain on the Site. [*sic*] The Purchaser must make application and obtain approval from the Landlord prior to the completion of the sale. Signage must be in accordance with Park Rules. Home inspection BY LICIENCED [*sic*] INSPECTOR and approved water meter to be installed before possession.

2. In July 2017, I told the landlord that I planned to sell my mother's mobile home because she had entered into a care facility in [redacted].

3. On July 14, 2017, in a series of email exchanges the landlord told my husband and I, among other things, that I was required to pave the driveway before I could put the home up for sale

4. On or about August 28, 2017, I received a letter from the landlord that said he would not be accepting new applications for tenancy agreements because of an issue with the [municipality]. I could not sell the home if the landlord would not accept applications for tenancies.

5. On January 1, 2018, my sister told me that while she stayed at the mobile home for the weekend she learned that the neighbour was having emergency repairs done to unclog the underground sewer lines below her unit.

6. On or about January 7, 2018, I received a letter from the landlord telling me I must pay for the emergency repairs done by Roto Rooter to the neighbours sewer line and that I must replace the underground sewer lines below my mothers unit. The landlord said he suspected the roots of a small tree on the pad my mother rented, were growing into the sewer line and causing the blockage.

7. On January 15, 2018, in an email exchange I told the landlord I would not agree to make these repairs or pay these bills because I felt emergency repairs to the sewer line were his responsibility. Through email the landlord replied telling me he was not responsible for emergency repairs.

8. At this time, I also asked if the landlord was now accepting applications for new tenancy agreements as I had recently noticed a unit had been sold.

9. The landlord told me he was accepting applications now after developing a new disclosure document. This did not seem like a valid reason for not accepting applications because my mother had already been given a disclosure document when she first signed the tenancy agreement. It discloses how the [municipality] will not allow old or fire damaged units to be replaced if there were a need to do so.

10. On March 21, 2018, my mother passed away and I was left to administrate her estate. I let the landlord know shortly thereafter.

11. On June 19, 2018, while I was painting the rails at the mobile home the landlord approached me and proceeded to threaten me. He said I had better pave the driveway and pay for the sewer repairs or it could end up costing me thousands of dollars like it had cost the other tenants who hadn't done as he said.

12. On June 25, 2018, my realtor contacted the landlord. The landlord would not answer the realtor's questions or supply an updated tenancy agreement with current park rules.

A copy of an email from the realtor G.W. dated June 25, 2018 to the landlord was submitted into evidence. The realtor asks some basic questions from the landlord, including for a copy of the park rules and

> Also if I could be made aware of anything else that I will need to inform any prospective Buyers about? Also is there anything to inform my Sellers about that they need to be award of in order to have the property ready for a smooth transaction?"

The landlord responds three hours later and writes in his email that he will not be intimidated by realtors, nor be questioned on decisions regarding tenancies.

The two then get into what can only be described as a "back and forth" exchange of curt and subdued hostile communication.

13. On July 3, 2018, after multiple requests for information, the landlord told my realtor that if I wanted to sell the home I must replace the underground sewer lines, fix a cleanout that Roto Rooter broke and pay the bill for the emergency repairs made to the neighbours unit.

14. On July 12, 2018, I paid for a plumber to fix the cleanout and scope the lines to see if repairs were needed. The plumber fixed the cleanout and found that the lines were clear. I also had the small tree cut down to below the surface of the ground.

On July 18, 2018, the landlord sent an email to the tenant's realtor, in which the landlord writes the following:

We have no problem moving ahead with this issue, but before we continue on, the issue with the tree roots in our sewer line must be corrected, when this issue has been resolved to our satisfaction we will proceed with a seamless transfer of the tenancy contract.

15. On August 13, 2018, in an email, the landlord told my realtor that the repairs I had made were not enough and that I must not sell the home until I replaced the sewer lines, removed the stump and roots of the tree, and paved the driveway.

16. On August 19, 2018, I sent an email to the landlord telling him I would not be doing anything further to his land and that I would be listing the home shortly. The landlord replied telling me, among other things, that he did not require me to pave the driveways and that it was an issue between him and the new tenants.

17. I listed the home for sale on August 23, 2018, and the next day I received a fully accepted offer, site unseen, subject to viewing for $137,500. [A copy of the Contract of Purchase and Sale was submitted into evidence.]

18. On August 25th, 2018, the buyers viewed the unit and the first subject was removed. On August 27-28, 2018, the buyers realtor communicated with the landlord through email.

19. In the emails my realtor shared with me, it showed the landlord had told the buyers realtor that the buyers must pave the driveways and that there was an issue with the sewer. The landlord said the buyers must give him their inspection report to go over. The landlord told the agent that we had an outstanding bill with him and that there were also issues with the [municipality] regarding unit replacement.

20. The buyers decided to collapse the sale citing the landlords requirements and the issue with the [municipality] as their reasons. A copy of the emails between the two realtors is attached to this affidavit as Exhibit "B."

Exhibit B (and the email #38) includes a copy of the email (dated August 28, 2018) between the realtors, and it reads as follows:

Please see below some of the items the Park Owner has listed as issues or requirements for this purchase.

Unfortunately these, as well as the issue with the Bylaw has lead to their decision to collapse the deal.

Thanks again for your time and efforts on this one.

21. On September 26, 2018, my lawyer sent a demand letter to the landlord asking him to stop interfering with the sale of the home.

22. On October 26, 2018, I filed an application for Dispute Resolution through the Residential Tenancy Branch.

23. On November 6, 2018, I negotiated a second accepted offer for $137,500 subject to inspection and park approval. An inspection was done, found to be satisfactory, and that subject was removed.

24. After the landlord talked to the buyers realtor, the buyers decided to collapse the sale.

25. On November 14, 2018, the landlord received an RTB-10 tenancy assignment form from me. The landlord did not fill it out and return it to me, instead he contacted the buyer directly and gave her reasons why she should not consider buying the unit. I did not file an application to obtain an order requiring the landlord to assign the tenancy agreement because the buyer collapsed the sale right away.

A copy of an email the landlord sent to the buyer reads, in part, as follows:

Hello [landlord]:

We just wanted to drop a note to let you know that my friend [T] has decided not to proceed with the purchase of the mobile home property that has arbitration issues, etc.

Thank you for your time and kindness in apprising us of outstanding problems relating to that property that were not disclosed by the seller.

26. In an email on November 14, 2018, the buyers realtor told my realtor, that the landlord required the new tenants to pave the driveways and that they would be held responsible for roots from the small tree that might grow into his sewer line. A copy of the emails between the two realtors is attached to this affidavit as Exhibit "D".

27. On November 15, 2018, I received an email from the [municipality] which clarified their position on the zoning by-laws. This letter contradicted what the landlord had been telling tenants and prospective buyers regarding unit replacement. The [municipality] would allow unit replacement as long as the new unit was the same size or smaller than the existing unit.

28. On December 4, 2018, the Dispute Resolution Hearing was held by telephone conference call. The arbitrator decided to deal with one issue only, "repairs needed" the bulk of the application was dismissed with leave to re-apply. The hearing lasted about twenty minutes.

29. During the hearing the landlord said that his agent had already completed repairs to the sewer lines and that no further repairs were needed. I also agreed that as far as I knew, further repairs were not needed. A copy of the decision for dispute resolution is attached to this affidavit as Exhibit "E".

30. On December 6, 2018, I emailed the landlord to let him know I had a prospective buyer. The landlord told me he would tell the buyers about the issues with the sewer lines, the roots/stump and the other tree that he still felt needed to be removed.

31. On December 14th, 2018, I faxed an RTB-10 tenancy assignment form to the landlord. The landlord refused to assign the tenancy agreement threatening instead to drag the procedure out through the RTB if we did not apply for a new tenancy agreement. A copy of the emails between myself and the landlord are attached to this affidavit as Exhibit "F".

In an email dated December 14, 2018, the landlord states to the tenant:

> [. . .] so not to waste any more time or energy on this unusual attempt by you and your Realtor to sell this home, we will be kind enough to inform you that we will not agree to the assignment of this tenancy contract, we will forward to your e-

> mail address the park owners response sheet, to you tomorrow, so you will not have to wait ten days, your recourse now is to make an application to the Residential Tenancy Branch for an arbitration hearing, which we will vigorously defend. Unless your selling agent is going to present application for a normal application for a new Tenancy Contract, do not contact this office [. . .]

32. My realtor let the buyers' realtor know of the possible requirements the landlord might put forth. In order to facilitate the sale, I agreed to take the potential cost of the driveways and sewer repairs off the final price.

33. On December 18, 2018, the landlord gave the buyers' realtor a list of requirements to be met before he would issue a new tenancy agreement. A copy of the email between my realtor and the buyers' realtor is attached to this affidavit as Exhibit "G".

34. The buyers said they were not pleased with the increased pad rental fees but that they would go with the new tenancy agreement that the landlord wanted.

An email dated December 18, 2018, between B.T. and G.W. (the two agents) in which it states, in part:

> Ps. My clients are ok with the owner not assigning the tenancy and creating a new one including the requested credit checks so we will try and move on as quickly as possible.

35. On January 8, 2019 the mobile home was sold for $134,000 with a credit to the buyers of $6,500 for paving, $1,000 to cover the cost of further scoping to the sewer lines, removal of another bush/roots and the bill for emergency repairs.

As for the legal basis for which damages are sought, tenant’s counsel argued that the landlord breached section 28(3) of the Act by engaging in wrongful interference (or, as it sometimes referred, tortious interference) with the tenant’s attempts to sell the property. It was further argued that the landlord breached sections 26 and 27 of the Act by having the tenant repave the driveway and paying for a plumbing problem caused by tree roots. Moreover, counsel argued that the landlord breached a previous decision (of December 28, 2018) of the Residential Tenancy Branch in which the sewer and plumbing issues

were apparently resolved, by then resurrecting the issues as a basis for continued interference with potential sales.

But for the landlord's breach of the Act the tenant would not, counsel argued, have suffered the losses claimed. Submitted into evidence was a Monetary Order worksheet which itemises the breakdown of damages sought.

Counsel then made submissions regarding the claim for $5,000.00 in aggravated damages. He argued that aggravated damages in this case are appropriate because (1) the landlord's conduct is deserving of rebuke, (2) the landlord has no fear of the Residential Tenancy Branch and does not abide by its authority, (3) the landlord uses the Branch's dispute resolution process as a delay tactic, and (4) the landlord refuses to accept that the Branch has the authority to issue monetary awards.

He further submitted that the landlord's unempathetic behavior and manner in dealing with the tenant, considering the death of her mother, is conduct that warrants the imposition of aggravated damages. In summary, counsel argued that $5,000.00 is an appropriate award for stress and anxiety caused by the landlord's conduct, and that such an award would act as a deterrence mechanism.

Tenant's counsel's submissions ended at 10:18 AM, at which time a short recess was taken. After resuming the hearing at 10:30 AM, the landlord provided his testimony and submissions. The landlord testified that counsel's submissions and supportive evidence "paints a pretty bleak picture."

He testified about the sewer line problem and the tree. He said that it is the responsibility of the tenant on whose site a tree is planted to deal with any issues arising from that tree. Further, he argued that it was the tenant's responsibility to maintain the sewer line.

Regarding the tenant's claim that the landlord threatened the realtor, the landlord testified that "I did not threaten" him. But he added that he did promise to report the realtor's conduct to the appropriate board. And, he took issue with the realtor initially not disclosing which site was for sale.

The landlord testified that as the landlord, he is entitled to what is going on the park, and that he must exercise a certain level of due diligence.

Regarding the paving, the landlord argued that this was a non-issue, and was a condition of sale of any site in the park. Indeed, he added, the value of a home will increase when such paving is underway. And, that paving was required as per a park rule change.

The landlord also spoke of bylaw issues with the municipality, which now restricts the number of manufactured home "units" to twenty per hectare.

As for the issuing of a new tenancy agreement, the landlord testified that "we didn't refuse the tenancy agreement; they didn't send it."

Regarding the collapsed deal, the landlord remarked that it was the potential buyer's decision not to proceed, and that he is not responsible for that decision. There were "outstanding problems not disclosed to the seller," so the deal collapsed. Problems included not being able to bring a dog into the park.

In summary, the landlord reiterated that "we're not responsible for people changing their minds." Indeed, "we're in the business of having tenants," and that it would not, in fact, be in his interests to thwart a potential new tenant from coming into the park. The landlord "did not in any shape or form discourage prospective buyers from coming into the park."

In terms of the tenant's claim that the landlord not accepting assignment, the landlord testified that "we wouldn't accept it [the application] because we couldn't read it . . . it was all blurred." Nonetheless, "we refused the assignment because it's our right to refuse an assignment."

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?

2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

Breach of section 28 of the Act

Section 28 of the Act states as follows:

> (1) A tenant may assign a tenancy agreement or sublet a manufactured home site only if one of the following applies:
>
> (a) the tenant has obtained the prior written consent of the landlord to the assignment or sublease, or is deemed to have obtained that consent, in accordance with the regulations;
>
> (b) the tenant has obtained an order of the director authorizing the assignment or sublease;
>
> (c) the tenancy agreement authorizes the assignment or sublease.
>
> (2) A landlord may withhold consent to assign a tenancy agreement or sublet a tenant's interest in a manufactured home site only in the circumstances prescribed in the regulations.
>
> (3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

In this dispute, the landlord received a tenancy assignment form from the tenant on November 14, 2018. Instead of filling the form out and returning it to the tenant, the landlord contacted the potential buyer directly and provided reasons why she should not buy the home.

Section 45(1) of the *Manufactured Home Park Tenancy Regulation* (the “Regulation”) requires that a landlord respond within 10 days of receiving a request for an assignment, and section 45(2) of the Regulation requires a landlord, where they withhold consent to assign, indicate the grounds on which they are withholding consent. There is no evidence in this dispute that the landlord complied with section 45 of the Act, in respect of the first potential sale of the home.

As for the second, and ultimately successful sale, while the landlord initially refused to deal with an assignment, the assignment issue then became moot because the parties agreed that the buyers would simply be making a new application for a tenancy agreement.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving that the landlord breached section 28 of the Act regarding the first sale, but that they have not met the onus of proving a breach in respect of the second sale.

While the landlord may have breached section 28 of the Act in respect of the first sale, the evidence does not establish that, but for this breach, the potential purchaser collapsed the deal. Rather, the evidence is that the potential purchaser collapsed the deal for other reasons.

Tort of Tortious Interference

As a starting point, I make note that section 84 of the Act states that the common law applies in disputes between landlords and tenants.

Tenant's counsel argued that the landlord is liable for wrongful interference in respect of his conduct with the various realtors. The tort of unlawful interference with economic relations was most recently clarified in the Supreme Court of Canada's decision in *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.,* 2014 SCC 12. (I note that tenant's counsel did not provide any caselaw or make any extensive legal argument as to how the landlord's conduct would meet the elements of the tort, but I shall address them nonetheless.) The court held that (emphasis added):

> The tort of unlawful interference with economic relations has also been referred to as "interference with a trade or business by unlawful means", "intentional interference with economic relations", "causing loss by unlawful means" or simply as the "unlawful means" tort. The unlawful means tort is an intentional tort which creates a type of "parasitic" liability in a three-party situation: it allows a plaintiff to sue a defendant for economic loss resulting from the defendant's unlawful act against a third party. Liability to the plaintiff is based on (or parasitic upon) the defendant's unlawful act against the third party. The two core components of the unlawful means tort are that the defendant must use unlawful means and that the

> defendant must intend to harm the plaintiff through the use of the unlawful means.
>
> In order for conduct to constitute "unlawful means" for this tort, the conduct must give rise to a civil cause of action by the third party or would do so if the third party had suffered loss as a result of that conduct. The unlawful means tort should be kept within narrow bounds. Its scope should be understood in the context of the broad outlines of tort law's approach to regulating economic and competitive activity.

In this dispute, it is established that the landlord interfered with the tenant's real estate transactions. However, what is missing from both the landlord's first interference in the tenant's sale of the home and the second interference, is that the conduct does not, I conclude, give rise to a civil cause of action by the third party (the potential buyers), nor would the third party buyers have suffered loss as a result of the landlord's conduct. Nor, I find, is it proven that the landlord intended to harm the tenant. His conduct was brusque and clearly in his own interests, and that of the park, but I do not conclude based on the evidence that he purposely intended to harm the tenant or her interests.

While my finding does not condone or excuse the landlord's conduct – he clearly overstepped his boundaries more than once, and there may very well be a separate cause of action against the landlord outside the jurisdiction of the Act – the Supreme Court of Canada has restricted the elements of this tort to requiring that the third party would have a (potential) claim against the defendant. However, tenant's counsel did not raise or argue this point, nor do I find that there would be a claim by the third party. Further, while the paving and sewer line expenses ultimately resulted in a credit to the buyers, the landlord's requiring that those be done before any sale also did not create a situation where the third-party buyer would have a cause of action against the landlord.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not proven their case that the landlord interfered with the sale of her home.

Having found that the landlord did not breach the Act (except for section 28, which is addressed below), including a breach under the common law, I need not consider the remaining three criteria of the compensation test as set out at the beginning of this section. Likewise, I need not consider the claim for aggravated damages, which would

only arise had the landlord been found in breach of the Act and where significant loss was proven resulting from that breach.

Regarding the landlord's breach of section 28 of the Act, the tenant has not proven any significant loss that resulted from the breach. Again, while the landlord failed to comply with this section of the Act in respect of the assignment application, the deal collapsed because of the landlord contacting the buyers and convincing them not to move forward the deal. Where a significant loss has not been proven, but where there is an infraction of a legal right, I may award nominal damages. In this case, I award nominal damages in the amount of $500.00.

Finally, section 65(1) of the Act provides that an arbitrator may order payment of a fee under section 52(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the applicant was successful in respect of one aspect of their claim, I grant a reimbursement of the filing fee in the amount of $100.00.

Conclusion

The tenant's application is granted, in part.

I grant the tenant a monetary order in the amount of $600.00, which must be served on the landlord. Should the landlord fail to pay the tenant the amount owed, the tenant may file, and enforce, the order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: July 22, 2020

Residential Tenancy Branch