



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 06, 2020 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated June 25, 2020 (the “Notice”); and
- To suspend or set conditions on the Landlord's right to enter the site.

The Tenant appeared at the hearing with the Advocate. The Landlord appeared at the hearing with the Co-landlord.

The Tenant was going to call a witness at the hearing; however, it was determined that the witness was not relevant to the dispute of the Notice and therefore I did not hear from the witness.

The Application was made under the *Residential Tenancy Act*; however, all parties agreed this fell under the *Manufactured Home Park Tenancy Act* (the “Act”) and therefore I have considered the Application under this *Act*.

Pursuant to rule 2.3 of the Rules of Procedure (the “Rules”), I advised the Tenant at the outset that I would consider the dispute of the Notice and dismiss the request to suspend or set conditions on the Landlord's right to enter the site as it is not sufficiently related to the dispute of the Notice. This request is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

This tenancy relates to a mobile home on a large piece of otherwise vacant land that the Landlord and Co-landlord recently purchased. The Tenant owns the mobile home.

The Tenant testified as follows in relation to the tenancy agreement in this matter. The Landlord and Co-landlord are the third owners of the site during his tenancy. He had a verbal tenancy agreement with the original owner starting in 1975. The tenancy is a month-to-month tenancy. Rent has been \$275.00 per month for the last 10 years. Rent is due on the first day of each month. He did not enter into a new tenancy agreement with the Landlord and Co-landlord when they purchased the land.

The Co-landlord testified that she and the Landlord became owners of the property on June 16, 2020. The Co-landlord testified as follows. The Tenant's evidence says rent is due on the 15th of each month. The property is forestry grazing land. It is their understanding the Tenant had a verbal agreement with the original owner. They do not dispute that the tenancy started in 1975 and agree it is a month-to-month tenancy. They agree rent is \$275.00 per month but understand it is due on the 15th day of each month. They agree the property has the Tenant's mobile home on it and is otherwise vacant.

The landlords testified that they thought a new verbal agreement was put in place when they purchased the property. The landlords referred to an agreement between the parties to end the tenancy which I will address below.

The Notice was submitted as evidence. The grounds for the Notice are:

1. Tenant is repeatedly late paying rent;
2. Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord;
3. Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk;
4. Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, damage the Landlord's property;
5. Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the site or property;
6. Tenant has not done required repairs of damage to the site or property; and
7. Tenant knowingly gave false information to prospective tenant or purchaser of the site or property.

There was no issue that the Tenant received the Notice taped to his door June 25, 2020.

The landlords provided written submissions and evidence as follows.

An email from the landlords' lawyer to them stating:

Seller's lawyer responded as follows:

"I do not know when the tenancy started, she said he has been there for a long long time. Also, no end date as there was no written agreement.

I do know that there was no deposit, rent is on the 15th of the month, there is no rental agreement – this was just month to month, rent is \$275.00."

The landlords provided written submissions with the following relevant points as background:

- They spoke to the Tenant prior to purchasing the property and the Tenant agreed to the landlords' purchasing the mobile home and him vacating the property by June 30, 2020.
- On June 16, 2020, the landlords attended the property to get the Tenant to sign a written agreement in relation to their verbal agreement and the Tenant said he was not accepting the agreement and not vacating.

The following is a summary of the landlords' basis for the Notice as outlined in their written submissions.

Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord

- The Tenant agreed to vacate and then changed his mind which has significantly interfered with the landlords' plans to start a farm on their land during the summer, has resulted in loss of income to the landlords and has caused a lot of stress.
- The Co-landlord is uncomfortable visiting the property as she does not want to put herself in a harmful situation and does not trust the Tenant as he has gone back on his word and caused unforeseen issues for the landlords.
- The Co-landlord is discouraged as she has been unable to share her excitement with her family, as they are not comfortable visiting the property until the Tenant has vacated.

Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk

- The property is forestry grazing land surrounded by natural habitats, creek water and neighbouring farm land.
- The way the Tenant has maintained the land is not respectful to the standards the landlords uphold.
- There are piles of garbage abandoned throughout the property including oil cans. Grass is grown around items and the sun has damaged them, proving these items have been left there indefinitely with no intentions of being cleaned up. This is a significant risk to the soil, ecosystems and wildlife.
- A pump has been left in the creek which is a significant risk as it is a fish-bearing creek which discharges into a popular lake.
- The area is extremely vulnerable to wildfires. The Tenant has neglected the proper maintenance a large piece of land like the property requires. The Tenant has not cleaned up dead brush from fallen trees and branches. There are piles of dry brush that put the property at an additional risk of forest fires. This poses another significant risk to the property and surrounding forest.
- The mobile home is not properly maintained. The sewage pipe coming from the home is leaking raw sewage into the land which is a significant risk to the property.

- The septic system was never permitted with the city which indicates the treatment of the sewage is not properly treated for reintroduction into waterways.

Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the site or property

- Damage to the property from the accumulated garbage and neglect.
- Damage to the creek that flows throughout the property.
- Damage to the property by causing additional risk of wildfires.
- Damage to the property due to the sewage leak from the mobile home.
- The Tenant has not paid a security deposit.
- The Tenant failed to tell the property owner about the bridge on the property that was destroyed in 2018. The bridge is not safe and was repaired by the Tenant using scrap wood.

Tenant has not done required repairs of damage to the site or property

- The Tenant failed to inform the previous owner of the damage to the bridge in 2018.
- Damage to the property due to excessive garbage.
- Damage to the creek that flows throughout the property.
- Damage to the property by causing additional risk of wildfires.
- Damage to the property due to the sewage leak from the mobile home.

Tenant knowingly gave false information to prospective tenant or purchaser of the site or property

- The Tenant falsely told the landlords he would vacate June 30, 2020.

The landlords submitted photos of the property.

In relation to the grounds for the Notice, the landlords relied on their written submissions and provided the following further testimony and submissions at the hearing.

In relation to late rent, the seller did not give them June rent. They received the Tenant's July rent payment but did not want to accept it because there was no proof of the tenancy agreement.

They are not alleging illegal activity.

They did not provide the Tenant with anything in writing asking or telling the Tenant to do repairs and are not aware of the previous landlords doing so.

They are not comfortable going to the property.

The septic is a gravel pit which is not approved and not up to code. The pipes in the home are eroded and leaking sewage.

The home is not well maintained. The state of the property is harmful to the nearby creek and to wildlife.

The Tenant provided written submissions which state in part:

- Items have accumulated on the property over the 40 year tenancy but not to an extent that causes extraordinary damage.
- There have been no required repairs ordered by the previous or current landlords.
- The landlords have failed to maintain the bridge access on the property.
- The Tenant originally agreed to vacate June 30, 2020 as he was unaware of his rights. The Tenant subsequently told the landlords he did not want to go forward with the agreement.

The Tenant relied on his written submissions and provided the following further testimony and submissions at the hearing.

He has been on the property since 1975. It is zoned as wildlife habitat. It is not accurate that there is sewage or oil everywhere. There is lumber on the property. In relation to the bridge, he was only responsible for maintaining it such that he could get across it. His home is 50 years old. It is run down but is livable. He is not aware of any repairs he is required to do. He never received a written request to do repairs.

Analysis

Neither party argued that the *Act* does not apply to the parties or that the RTB does not have jurisdiction in this matter. Given this is one mobile home on otherwise vacant land I considered whether this was a tenancy or license to occupy as outlined in Policy Guideline 09 and whether the property is a "manufactured home park" as that term is defined in the *Act*.

I am satisfied the tenancy agreement is as outlined by the Tenant given he made the agreement with the original owner and the landlords were not involved at the time. Further, the Co-landlord agreed with the Tenant for the most part, other than in relation to when rent is due. The email submitted by the landlords also supports the Tenant's testimony about the tenancy agreement, other than when rent is due.

I do not find the situation to be a license to occupy given the site and home are the Tenant's primary residence and have been since 1975. The Tenant is not using the site short-term or for vacation or recreational use.

I am satisfied the situation falls under the definition of "manufactured home park" which can include a parcel of land with one manufactured home site.

Given the above, I am satisfied the *Act* applies. I am satisfied the Tenant had a tenancy agreement with the original owner and that this has carried on with the second owner and now the landlords. The tenancy agreement in place when the landlords purchased the property continues until ended in accordance with the *Act*. The tenancy did not end because the landlords purchased the property. The parties did not have to enter into a new tenancy agreement as the original tenancy agreement simply continues. The fact that the original tenancy agreement was verbal does not change things as verbal tenancy agreements are tenancy agreements under the *Act* as is clear from section 1 of the *Act* and the definition of "tenancy agreement".

I acknowledge that the parties verbally discussed ending the tenancy. I have not considered or decided whether this ended the tenancy in accordance with the *Act* as this is not the issue before me. The issue before me is whether the Notice is valid and whether the tenancy will continue or end given the Notice.

The Notice was issued pursuant to section 40 of the *Act*. The Tenant had 10 days to dispute the Notice pursuant to section 40(4) of the *Act*. There is no issue the Tenant received the Notice June 25, 2020. The Application was completed July 06, 2020. This was within time as the tenth day fell on a Sunday, when the RTB was closed, and therefore the deadline fell to the Monday, July 06, 2020 pursuant to the Rules.

Pursuant to rule 6.6 of the Rules, it is the landlords who have the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Notice was issued pursuant to the following sections of the *Act*:

40 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant is repeatedly late paying the rent...
- (c) the tenant or a person permitted in the manufactured home park by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park...
 - (iii) put the landlord's property at significant risk;
- (d) the tenant or a person permitted in the manufactured home park by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property...
- (e) the tenant or a person permitted in the manufactured home park by the tenant has caused extraordinary damage to a manufactured home site or the manufactured home park;
- (f) the tenant does not repair damage to the manufactured home site, as required under section 26 (3) [obligations to repair and maintain], within a reasonable time...
- (i) the tenant knowingly gives false information about the manufactured home park to a prospective tenant or purchaser viewing the manufactured home park;

I have considered each of these sections and grounds in the Notice and my findings are as follows.

Tenant is repeatedly late paying rent

I am not satisfied the Tenant is repeatedly late paying rent. I find based on the testimony of the landlords that the seller failed to give them June rent and they chose not to accept July rent.

In relation to June rent, this is an issue between the seller and landlords. It is not the Tenant's issue or responsibility to deal with. The landlords cannot end the tenancy on this basis.

The documentary evidence shows the Tenant sent July rent to the Landlord on July 01, 2020. The Tenant paid rent on time. It is the landlords who did not accept this rent. The landlords cannot choose not to accept rent and then seek to end the tenancy for failure to pay rent or late payment of rent as the absence of rent is their fault, not the fault of the Tenant.

The landlords do not have a basis to end the tenancy under this ground.

I also note the landlords were not permitted to serve the Notice on this basis pursuant to Ministerial Order No. M195 dated June 24, 2020.

Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord

I do not accept that the Tenant agreeing verbally to vacate and then changing his mind gives the landlords grounds to end the tenancy under section 40 of the *Act*.

Section 37 of the *Act* sets out how tenancies will end and states:

(c) the landlord and tenant agree in writing to end the tenancy (emphasis added)

The landlords chose to purchase the property without having a written agreement about ending the tenancy in place. The consequences of this result from the landlords' own choices and actions. The Tenant changed his mind about the verbal agreement. The landlords are not entitled to end the tenancy for cause because the Tenant changed his mind about a verbal agreement the landlords chose not to get in writing. This is not the purpose of section 40 of the *Act*.

There is insufficient evidence before me showing the Tenant is stopping the landlords from accessing the property. There is insufficient evidence before me showing the Tenant poses a risk of harm. I am not satisfied based on the evidence provided that the Tenant is causing a significant interference or unreasonable disturbance in this regard.

The landlords do not have a basis to end the tenancy under this ground.

Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk

The use of the word "significant" in section 40(1)(c)(iii) indicates that this is a high threshold.

The parties disagree about maintenance of the property and whether the Tenant has put the property at significant risk.

I do not find the landlords' verbal testimony or written submissions alone sufficient to show significant risk in part because the landlords' position is disputed but also because I would expect to see documentary evidence to support this position.

The only documentary evidence the landlords submitted are photos of the property. The photos show items and garbage left around the property. However, the photos do not show a significant issue or obvious risk. I am not satisfied that the amount or nature of the items and garbage is such that I can conclude based on photos alone that they pose a significant risk to the property. It appears from the photos that the property needs to be cleaned up. However, I cannot tell from the photos that the items or garbage left around the property pose a significant risk to soil, ecosystems, wildlife or the creek. In the absence of further evidence, I am not satisfied there is actual risk to soil, ecosystems, wildlife or the creek.

In relation to the dead brush, I am not satisfied the Tenant is responsible for maintaining the entire property. The Tenant is responsible for maintaining the site. Although it has not been made clear to me what the site covers, I am not satisfied it includes the entire property as the evidence shows the landlords have accessed the property for recreational use since purchasing it. This indicates that the site does not include the entire property. Given this, I am not satisfied there is dead brush that the Tenant is responsible for dealing with versus the landlords.

In relation to the sewage issue, the Tenant denied this is a problem. I cannot tell from the photos what is happening with the pipes or sewage. The photos are not sufficient to show significant risk in this regard.

Pursuant to Policy Guideline 01, the septic system is the landlords' responsibility, not the Tenant's responsibility. The landlords cannot end the tenancy on the basis that the septic system is not approved or up to code given it is their responsibility.

The landlords do not have a basis to end the tenancy under this ground.

Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to, damage the Landlord's property

The landlords are not alleging illegal activity which is a requirement of section 40(d) of the *Act*. The landlords do not have a basis to end the tenancy under this ground.

Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the site or property

Again, the use of the word "extraordinary" in section 40(1)(e) of the *Act* indicates this is a high threshold.

The landlords have failed to prove the Tenant has caused extraordinary damage to the property for the same reasons they have failed to prove significant risk to the property. The only documentary evidence provided are the photos. Again, the photos show the property needs to be cleaned up. The photos do not show that the property or creek have been damaged. In the absence of further evidence, I am not satisfied the Tenant has caused extraordinary damage.

Section 17 of the *Act* prohibits landlords from accepting a security deposit for a manufactured home site tenancy. The absence of a security deposit here is irrelevant.

It is my understanding from the evidence that the bridge on the property was damaged because the creek flooded. This is not the fault of the Tenant. Nor is his failure to report it to the previous landlord the equivalent of causing extraordinary damage as the damage had already been done by the creek.

The landlords do not have a basis to end the tenancy under this ground.

Tenant has not done required repairs of damage to the site or property

Given the testimony of both parties, I find neither the previous landlords nor the current landlords have requested in writing that the Tenant do repairs in accordance with section 26(3) of the *Act* which states:

(3) A tenant must repair damage to the manufactured home site or common areas that is caused by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant. (emphasis added)

I am not satisfied the landlords are entitled to end the tenancy under section 40(1)(f) of the *Act* without taking the reasonable first step of notifying the Tenant in writing of what repairs he is expected to make pursuant to section 26(3) of the *Act*.

Further, failing to inform the previous landlord of damage to the bridge is not a failure to do repairs pursuant to section 26(3) of the *Act*. This is a different issue.

As well, the landlords have failed to prove damage to the property or creek as already explained. Therefore, I am not satisfied the Tenant is required to repair damage to the property or creek. In my view, the real issue is that the property needs to be cleaned up. This is a different issue than repairs required pursuant to section 26(3) of the *Act*.

The landlords do not have a basis to end the tenancy under this ground.

Tenant knowingly gave false information to prospective tenant or purchaser of the site or property

I do not accept that the Tenant gave the landlords false information. I find from the testimony and submissions of both parties that the Tenant changed his mind about vacating. Changing one's mind is not the same as giving false information.

Further, I do not find that statements about vacating are statements about the manufactured home park as that phrase is contemplated in the *Act*. I find section 40(1)(i) of the *Act* is meant to cover situations where a tenant provides information about the manufactured home park itself that is false. I do not accept that it is meant to cover a situation where a tenant says they will vacate on a specific date and then changes their mind.

As well, the landlords are again seeking to end the tenancy for cause because the Tenant changed his mind about a verbal agreement that the landlords failed to get in writing. This is not a basis to end a tenancy under section 40 of the *Act*.

The landlords do not have a basis to end the tenancy under this ground.

Given the above, I find the landlords did not have grounds to issue the Notice.

I note that this tenancy has been ongoing since 1975. There is no evidence before me suggesting that either of the previous landlords took any issue with how the Tenant maintained the home or property. The landlords had owned the property for less than ten days when they issued the Notice. The landlords allege issues that it seems had not been raised with the Tenant for more than forty years.

If the issues raised are in fact issues the Tenant is responsible for under the *Act*, I would expect the landlords to request that the Tenant deal with them in writing before attempting to end the tenancy over them. It is only fair to put the issues in writing and give the Tenant a reasonable opportunity to remedy them before attempting to end the tenancy. I find this because I find it unlikely that the issues have been raised with the Tenant over the last forty years and because the photos do not show significant issues that the Tenant should know are causing significant risk or extraordinary damage. In my view, the photos show a home and property that should be cleaned up. The landlords should put this request in writing to the Tenant and provide him an opportunity to comply with the request.

In the circumstances, I cancel the Notice. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

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

Dated: August 04, 2020

Residential Tenancy Branch