Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NO. 151 CATHERDRAL VENTURES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On October 26, 2020, the Tenant filed an Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* ("the *Act*") to cancel a One-Month to End Tenancy for Cause (the "Notice") issued on October 16, 2020, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord represented by the Company President and the Park Managers (the "Landlord") and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Landlord agreed that they received the Tenant's evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter – *Landlords Evidence*

During the hearing, the Tenant testified that they had received part of the Landlord's documentary evidence on January 9, 2021 and argued that this documentary evidence should not be accept into evidence it had not been served in accordance with the rules of procedure.

Section 3.14 of the RTB Rules of Procedure required that the applicant to a hearing must ensure that all evidence they intend to rely upon during the hearing is received by the respondent no later than 14 days before the date of the hearing, stating the following:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

> Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

The Landlord testified that they mailed through Canada Post and posted to the front door of the rental unit this part of their documentary evidence on January 4, 2021, and that they believed the door service gave the Tenant plenty of time to consider these documents before today's proceedings.

The Tenant testified that there had been two previous hearing between these parties with the Residential Tenancy Branch (RTB) and a hearing with the BC Supreme court and that through these decisions, both parties were aware that the Tenant had been ordered to not reside on the rental property during the winter months. The file numbers for the RTB hearings are recorded on the style of cause page for this decision.

The Landlord agreed that through these previous hearings, it had been determined that the Tenant had been ordered not to reside on the rental property during the winter months.

The Tenant argued that the Landlord's evidence should not have been posted to the door of the Manufactured Home as the Landlord knew that they were not residing there at the time of service.

I accept the agreed-upon testimony of these parties that the Landlord had known that the Tenant was not residing in the Manufactured Home park during the winter months and at the time of service of these documents. The intent of the door service provision found in section 81 of the *Act* is that the door used for service of the documents is the door to the current and primary residence of the party being served. Consequently, I find that the service of the Landlords evidence package, by posting it to the front door of the rental unit, to not have been in accordance with the *Act*.

I accept the testimony of the Landlord that they mailed their evidence package to the Tenant on January 4, 2021. Pursuant to section 83 of the *Act*, documents served in this manner are deemed received 5 days later. Accordingly, I find that the Tenant had received the Landlord's evidence as of January 9, 2021, four days before the date of these proceedings. Consequently, as the Tenant was not provided the required 14 days to review the Landlord's documentary evidence, I find that this part of the Landlord's evidence was not served in accordance with the *Act* and must not be considered in my final decision.

Issues to be Decided

- Should the Notice issued on October 16, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the recovery of the filing fee of their application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that they served the Notice to end tenancy to the Tenant on October 16, 2020, by posting it to the front door of the rental unit. The Tenant provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*
    - *Jeopardize a lawful right or interest of another occupant or the landlord*
- Written Details of cause:

    "Details of Events(s)
    Tenant had filed a sworn affidavit in a tenant ("Third party") dispute claiming that the Tenant has the authority to enter into a continuing lease with the Third Party. The Tenant has never had such authority and signed the document under false pretenses.
    The Third Party seeks to rely on this fraudulent lease to the detriment of the landlord."

    [Reproduced as written]

The Landlord testified that they issued the Notice to end the tenancy as the Tenant has provided a sworn affidavit to another renter of the park dated September 25, 2020, to be used by that renter in their own proceedings against the Landlord and that the Tenant had perjured themselves in this affidavit.

The Landlord testified that the Tenant had previously been employed as the Park Manager for several years but that as of 2010, they had been dismissed. However, that during their time as Park Manager, they had signed a tenancy agreement with this "Third-Party" renter on the Landlord's behalf.

The Landlord testified that the Tenant knowingly committed perjury on the second point if the sworn affidavit, which states the following:

> "2. To the best of my knowledge, the Agreement has never been altered in any way."

The Landlord argued that the Tenant knew the renter had signed a new tenancy agreement in 2012 and that they, therefore, perjured themselves in this affidavit when they swore that the "Agreement has never been altered," as the knew the agreement had been replaced.

The Landlord argued that perjury is a crime under section 131(1) of the Criminal Code and that this crime jeopardized their lawful rights as a Landlord and therefore was sufficient to end this tenancy.

The Tenant agreed that they had sworn the affidavit as written but that their statement contained in part 2 of that document were in regards to the 2009 agreement and that they were making to reference to the 2012 agreement.

The Tenant argued that they had not perjured themselves, as they were speaking to the facts as they understood them regarding the 2009 agreement, which had not been altered. The Tenant testified that they did not believe that altered and replaced have the same meaning.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the Notice to End Tenancy on October 16, 2020. Pursuant to section 40 of the Act, the Tenant had ten days, until October 27, 2020, to dispute the Notice. I have reviewed the Tenant's application and I noted that they filed their application to dispute this Notice on October 26, 2020, within the statutory time limit.

In this case, the Landlord is seeking to end this tenancy, claiming that the Tenant committed perjury under section 131(1) of the Criminal Code, by knowingly swearing a affidavit that contained false statements, and that this affidavit had jeopardized the Landlord's legal interest, which qualified as grounds to terminate this tenancy pursuant to section 40of the *Act.*

During the hearing, the Landlord and the Tenant offered conflicting verbal testimony regarding the validity of the Tenant's statements contained in their affidavit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, as it is the Landlord who issued the Notice to end the tenancy, it is the Landlord who holds the burden to prove their claims contained in that Notice.

After reviewing the Landlord's application, testimony and documentary evidence, I find that the Landlord is requesting that the Residential Tenancy Branch decide whether this Tenant perjured themselves in the affidavit that I have before me in these proceedings.

Although the Residential Tenancy Branch has the exclusive jurisdiction to hear cases related to disputes under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act,* the Residential Tenancy Branch is also limited to only hear matters that fall under those two *Acts*.

As an Arbitrator for the Residential Tenancy Branch, I have the jurisdiction to determine the validity of the Notice to end tenancy; however, I do not have the jurisdiction to render a decision on whether or not the Tenant's statements contained in this affidavit constitute perjury under the Criminal Code.

After reviewing the Landlord's documentary evidence, I find that there is no evidence before me to show that the Tenant had been found guilty of perjury by a court of competent jurisdiction. Consequently, I find that the Landlord has not provided sufficient evidence to support their claim to terminate this tenancy for the reasons indicated on this Notice.

Therefore, I grant the Tenant's application to cancel the Notice issued October 16, 2020, and I find the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the Act.

Section 65 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the $100.00 filing fee paid for this application. The Tenant is allowed to take a one-time deduction of $100.00 from their next month's rent in full satisfaction of this award.

Conclusion

The Tenant's application to cancel the Notice, issued October 16, 2020, is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenant permission to take a one-time deduction of $100.00 from their next month's rent.

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: January 20, 2021

Residential Tenancy Branch