



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid and/or loss of rent and recovery of the to remove the manufactured home from the rental site.

Both the landlords and the tenant appeared for the scheduled hearing date of August 26, 2021. The parties were affirmed, and the parties were ordered to not record the proceeding. Both parties had an opportunity to be heard on August 26, 2021 to some extent; however, I determined it appropriate to obtain additional evidence and I ordered the parties to provide me with additional evidence and the hearing was adjourned. An Interim Decision was issued on August 27, 2021 and sent to the parties along with the Notice of Dispute Resolution Proceeding for the reconvened hearing, via email. The Interim Decision should be read in conjunction with this final decision.

At the reconvened hearing of January 6, 2022 only the landlords appeared. The teleconference call remained open for approximately 40 minutes and in that time there was not appearance on part of the tenant. I continued to hear from the landlords without the tenant present; however, in making this decision I have considered the testimony I did hear from the tenant during the first hearing date of August 26, 2021.

Procedural Matters

As seen in the Interim Decision, the parties were to provide me with documentation concerning transfer of ownership of the manufactured home; assignment of the tenancy, if any; and, the landlords were to provide me with a copy of the invoice/receipt for demolishing the manufactured home. The parties were required to serve the same evidence they provided to me to the other party.

During the period of adjournment, both parties uploaded additional evidence to the Residential Tenancy Branch system for my consideration. The landlords included a registered mail receipt as proof their additional evidence was sent to the tenant via registered mail on December 13, 2021. I was satisfied the landlords served their additional evidence to the tenant and I admitted it for further consideration in making this decision.

As for the additional evidence submitted by the tenant, the landlords testified they did not receive a copy. I noted that the tenant did not provide any Proof of Service to demonstrate her additional evidence was served upon the landlords. Nor did the tenant appear at the reconvened hearing to provide oral evidence that she served her additional evidence to the landlords.

Rule 7.4 of the Rules of Procedure provides:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

I did not admit or further consider the tenant's additional evidence since she did not appear at the reconvened hearing to present it and I was unsatisfied the landlords were served with the evidence. As such, I was of the view that to admit the tenant's additional evidence would be unfair and prejudicial to the landlords.

I also noted that during the period of adjournment, the landlords submitted another Monetary Order worksheet that included a new claim for property taxes. The landlords had not made such a claim on their original Application for Dispute Resolution. The landlords did not serve the tenant with an Amendment and as seen in the Interim Decision I had not authorized the parties to provide me with any materials other than that expressly authorized in the Interim Decision. Therefore, I did not permit an amendment to add property taxes to the landlords' claim and the landlords are at liberty to seek recovery of such an amount by way of another Application for Dispute Resolution, if they so chose.

Issue(s) to be Decided

Have the landlords established that the named tenant is liable to compensate them for unpaid and/or loss of rent for the months of October 2020 through April 2021 and the cost to demolish the manufactured home?

Background and Evidence

The named tenant and her ex-spouse (referred to by initials JP) purchased a manufactured home located in the subject manufactured home park and entered into a oral co-tenancy agreement with the former landlord. The current landlords purchased the manufactured home park ("the park") on December 1, 2019.

Since there no written tenancy agreement for the subject tenancy, upon purchasing the park, the current landlords set out to determine the identity of the tenants for the subject site. The landlords explored the former landlord's records and saw the named tenant and JP as being listed as the tenants. The manufactured home was occupied by a different couple and the landlords approached the couple occupying the manufactured home who informed the landlords that the tenant of the site was JP. The landlords contacted JP and JP confirmed that he was the tenant for the site. The landlords also performed a search of the manufactured home registry which revealed that the manufactured home was registered to the tenant and JP as joint tenants at the subject site.

The tenant had testified that she and JP separated in 2018 and she moved out of the manufactured home while JP remained until they entered into an agreement to sell the manufactured home to a third party by way of monthly instalment payments. The tenant submitted that they entered into the sale agreement with the third party in 2019 and she understood that the third party proceeded to fix up the manufactured home and then rented it out to the couple. As such, the tenant was of the position that she never sublet the rental site. The tenant also indicated that the former landlord did not object to this arrangement.

When asked about requesting written consent to assign the tenancy agreement, the tenant stated she did not make any such request to the landlord but suggested JP may have. Unfortunately, JP died in December 2020 and cannot be summoned to testify. The landlords testified that they have no records from the tenant or JP requesting consent to assign or sublet or written consent of the former landlord and they did not given written consent.

The couple sub-letting the manufactured home from the third party moved out in 2020 and rent was not paid for October 2020. The landlords then issued a One Month Notice to End Tenancy for Cause on October 22, 2020 naming the tenant and JP as the tenants and the reason for ending the tenancy was as provided under section 40(1)(h) of the Act:

(h) the tenant purports to assign the tenancy agreement or sublet the manufactured home site without first obtaining the landlord's written consent or an order of the director as required by section 28 *[assignment and subletting]*;

The 1 Month Notice was posted to the door of the manufactured home. The landlord also sent a copy of the 1 Month Notice to the tenant via registered mail. The landlords did not send registered mail to JP as they understood JP was in the hospital having an amputation. Neither the tenant, nor JP, filed to dispute the 1 Month Notice.

The tenants did not respond or otherwise contact the landlords after the 1 Month Notice was served; however, the third party proceeded to rip the manufactured home apart in an attempt to recover some of the money she had paid toward the purchase of the manufactured home.

The tenant viewed the rental site and the remnants of the manufactured home in January 2021.

The landlords applied for an Order of Possession (file number referenced on the cover page of this decision) based on the 1 Month Notice and the landlords were provided the Order of Possession on March 17, 2021. The tenant did not appear at the hearing.

The landlords posted the Order of Possession to the rental unit and sent the Order of Possession to the tenant via registered mail. There was no response from the tenant and when the landlords contacted the tenant over the telephone on April 18, 2021 to enquire as to what she intended to do with the remainder of the manufactured home that was still on the site, the tenant responded that the manufactured home was now the landlord's property since they succeeded at the hearing in March 2021.

Given the tenant's response and/or lack of action, the landlord considered the manufactured home to be abandoned and proceeded to obtain a quote to demolish the manufactured home since it could not be moved. The landlords described how the third party had removed any and all fixtures from the manufactured home, likely in an attempt

to recovery monies she had invested in the manufactured home, including the windows and the roof.

The landlords had submitted the quote to have the manufactured home demolished originally but they subsequently secured a different contractor who provided the landlords a discount since the contractor was demolishing another manufactured home on the property. The landlords had the manufactured home demolished on June 30, 2021 at a cost of \$4053.00.

The landlords are of the position the subject tenancy did not end by way of a sales agreement for the manufactured home or assignment and the tenant remains liable to compensate them for the unpaid and/or loss of rent from October 2020 through April 2021, at the rate of \$400.00 per month, and the cost to demolish the manufactured home. The basis for seeking loss of rent from the tenant is that the landlords had to bring the tenancy to an end by way of a notice to end tenancy and then given the tenant(s) the opportunity to dispute the notice and appear at the hearing scheduled for March 2021. All that time the manufactured home remained on the site, precluding the landlords from re-renting the site.

The tenant did not dispute that the monthly rent was \$400.00. Rather, the tenant was of the position she is not liable to pay the amounts claimed by the landlord as she was no longer a tenant at the relevant time. The tenant stated she had moved out in 2018, leaving JP and the manufactured home on the site. Then the manufactured home had been sold to the third party in the summer of 2019, suggesting the third party became the tenant. The tenant acknowledged that she did not give the landlord a notice to end tenancy.

The tenant had testified that the third party had attempted to pay the landlords rent for October 2020, November 2020, and December 2020 but the landlords would not accept rent from the third party. The landlords submitted that no rent payments were received after September 2020.

The landlords did another search of the manufactured home registry in September 2021 and it still shows that the tenant and JP are the registered owners of the manufactured home. The landlords are of the position that means they remained the tenants of the site for the relevant time period. The landlords also submitted that they did not enter into a tenancy agreement with the third party and their consent for an assignment or sublet had not been given. Nor, are there any records of such provided to them by the former landlord.

Documentary evidence admitted and considered includes copies of: the manufactured home registry; the Order of Possession issued against the tenants on March 17, 2021; the invoice for the demolition of the manufactured home on June 30, 2021; and, a written history of events prepared by the landlords.

Analysis

Under section 20 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances when a tenant may withhold rent.

A tenant is obligated to pay rent until the tenancy ends. A tenant may also be held liable to compensate the landlord loss of rent if the tenant's actions, or lack thereof, are a violation of the Act, regulations or tenancy agreement and result in the landlord being unable to re-rent the site after the tenancy ends.

In this case, it was undisputed that the tenant was one of two co-tenants for the site. The dispute concerns whether the tenancy ended.

Both parties appeared to view ownership of the manufactured home as a determining factor to establish when the tenancy ended and the identity of the tenant(s) during the relevant time period. The tenant suggested the tenancy ended with the sale of the manufactured home to a third party in the summer of 2019. However, the landlords provided a copy of the manufactured home registry that shows that as of September 2021 the tenant and JP were still the registered owners of the manufactured home.

The Manufactured Home Registry maintains a central register of manufactured home ownership details. In British Columbia the sale, transfer or purchase of a manufactured home is only effective if the transaction is registered. While the tenant and JP may have executed documents to sell the manufactured home to a third party, it appears the third party did not register the manufactured home in her name as the registry continues to reflect the tenant and JP as the owners. Accordingly, I find the tenant remained an owner of the manufactured home during the relevant period.

Despite finding the tenant continued to own the manufactured home, ownership of the manufactured home in itself does not establish a tenancy or the identity of the tenant, and I reject the landlord's position that it does. A tenancy, like any other contract, forms

when the parties enter into an agreement. For a tenancy agreement, the landlord and the tenant agree to enter into a tenancy agreement that provides the tenant the right to possession of the site in exchange for certain obligations, most notably the obligation to pay rent. Under the Act, there is no requirement that the tenant have a manufactured home on the rented site to form a tenancy or have ownership of the manufactured home that is situated on the manufactured home site. This is consistent with part D. of Residential Tenancy Policy Guideline 9. In other words, it is possible for a person to have a tenancy agreement for a manufactured home site and leave the site vacant, move a manufactured home on the site that is owned by someone else, or sub-let the site to a person who owns the manufactured home. As such, I consider the ownership of the manufactured home as being a factor in identifying the tenants but not in itself determinative.

When the tenant appeared at the original hearing of August 26, 2021, she did not deny being a co-tenant when she purchased the manufactured home on the site and began occupying the site. Accordingly, I accept that she was a tenant, or co-tenant, and having rejected that a sale agreement in itself brought the tenancy to an end, I proceed to consider other factors to determine when the tenancy ended.

A tenancy ends pursuant to section 37 of the Act which provides:

How a tenancy ends

37 (1)A tenancy ends only if one or more of the following applies:

(a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i)section 38 [*tenant's notice*];

(ii)section 39 [*landlord's notice: non-payment of rent*];

(iii)section 40 [*landlord's notice: cause*];

(iv)section 41 [*landlord's notice: end of employment*];

(v)section 42 [*landlord's notice: landlord's use of property*];

(vi)section 43 [*tenant may end tenancy early*];

(b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 89 (2) (a.1), requires the tenant to vacate the manufactured home site at the end of the term;

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

- (d)the tenant vacates the manufactured home site or abandons a manufactured home on the site;
- (e)the tenancy agreement is frustrated;
- (f)the director orders that the tenancy is ended;
- (g)the tenancy agreement is a sublease agreement.

In this case, I had asked the tenant whether she had given a notice to end tenancy to the landlord and she stated she did not remember giving the landlord a notice to end tenancy. Rather, the only notice to end tenancy that has given was the 1 Month Notice given by the landlords to the tenant in October 2020 with an effective date of November 30, 2020. Pursuant to the decision issued on March 17, 2021 an Arbitrator concluded the tenancy was at an end based on the 1 Month Notice and issued an Order of Possession. As such, I find there is clear evidence that the tenancy ended based on the landlord's notice to end tenancy on November 30, 2020.

A tenancy agreement may be assigned to a new tenant, making the new tenant liable to fulfill the tenant's obligations under the tenancy agreement; however, section 28 of the Act stipulates that to assign a tenancy the landlord must give written consent; or the tenant obtains the Director's authorization to assign the tenancy agreement; or the tenancy agreement permits assignment. There was no written tenancy agreement to suggest assignment was permitted and I was not provided sufficient evidence to suggest the tenant or JP requested the landlord's consent or that the landlords or former landlord gave consent in writing. As such, I find it am unsatisfied the tenancy agreement was assigned to a third party.

Finally, the tenant had stated that she moved out before JP did, suggesting the tenancy may have ended for her when she moved out; however, moving out does not in itself end a tenancy. To end the tenancy would require a tenant's notice or vacating or abandoning the site by all occupants. When the tenant left, JP and the manufactured home remained at the site. As such, her departure did not end the tenancy.

In light of all of the above, I find on a balance of probabilities that the tenant continued to have a tenancy agreement until November 30, 2020 when the tenancy legally ended based on the 1 Month Notice.

When a tenancy ends, the tenant is required to return vacant possession of the rental site to the landlord. The tenant did not have the manufactured home removed from the site which is a violation of 40(5) of the Act. The tenant's failure to remove the manufactured home from the site at the end of the tenancy caused the landlords to

have to apply for and wait for an Order of Possession which was obtained on March 17, 2021. Despite serving the tenant with the Order of Possession the tenant did not have the manufactured home removed from the site. Rather, the tenant expressly stated to the landlords on April 18, 2021 that the manufactured home was theirs which I find is a statement consistent with abandonment of the manufactured home for the landlords to dispose of. I find the tenant violated the Act in failing to return vacant possession of the site to the landlords despite the end of the tenancy and despite an Order of Possession, thus, causing the landlords to suffer loss of rent until at least April 2021 and the cost to demolish the manufactured home that was by that time worthless given the removal of most of the windows and roof.

Based on all of the foregoing, I grant the landlords' request to recover unpaid and/or loss of rent in the amount of \$2800.00 for the period of October 2020 through April 2021 [\$400.00 x 7 months] from the tenant. I further award the landlords recovery of the disposal/demolition costs of \$4053.00 and recovery of the \$100.00 filing fee. In total, the landlords are entitled to recovery of \$6953.00 and I provide the landlords a Monetary Order in that amount to serve and enforce upon the tenant.

While I appreciate the tenant is only one party that had a hand in causing the losses that have been awarded to the landlords, it is important to note that the landlords' right to recovery is limited to making a claim against a tenant. Where there is a co-tenant, the landlord may pursue only one or all of the co-tenants and it is upon the co-tenants to apportion any liability amongst themselves. Apportionment of a liability between co-tenants may be pursued in the appropriate forum [in court or Civil Resolution Tribunal] and that may include making a claim against a co-tenant's estate. Without a tenancy agreement or an assignment in place with the third party, the landlords cannot claim against the third party. If the tenant is of the position the third party contributed to the losses, the tenant's remedy is to pursue the third party in the appropriate forum [the small claim division of Provincial Court or Civil Resolution Tribunal].

Conclusion

The landlords are provided a Monetary Order in the sum of \$6953.00 to serve and enforce upon the tenant.

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 7, 2022

Residential Tenancy Branch