



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT
 OPC, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenants and by the landlord. The tenants have applied for an order cancelling a notice to end the tenancy for cause, and to recover the filing fee from the landlord for the cost of the application. The landlord has applied for an order of possession for cause, and to recover the filing fee from the tenants.

The landlord and both tenants attended the hearing, and the landlord was accompanied by Legal Counsel; the tenants were accompanied by an Advocate. The landlord and one of the tenants gave affirmed testimony and the landlord called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

The parties agreed that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy For Cause dated April 23, 2023 was given in accordance with the *Manufactured Home Park Tenancy Act*?
- Has the landlord established that the One Month Notice to End Tenancy For Cause dated April 24, 2023 was issued in accordance with the *Manufactured Home Park Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on August 1, 1995 and the tenant still occupies the rental pad in the manufactured home park. However, the tenant named in this proceeding (JR) is the tenant named in the tenancy agreement, who does not reside there and is currently living in the U.S.; only the man named in this proceeding (JH) resides in the manufactured home. They were a couple and arrived together, and the manufactured home was owned by the mother of the tenant who is named in the tenancy agreement (JR). Generally, if 2 people are renting, both names would be on the tenancy agreement. A copy of the tenancy agreement has been provided by the tenants as evidence for this hearing. The tenant (JR) moved out more than 20 years ago without notifying the landlord, and the landlord has not accepted the other tenant (JH) as a tenant, nor has he ever signed anything.

Everything that has been sent to the tenant (JR), including receipts were also received by the tenant (JH). He (JH) acted as her (JR) agent. The landlord's daughter looks after the book work, and she was sending letters to the tenant (JR), which were passed on to her by the other tenant (JH).

The landlord served a notice to end the tenancy, including his name (JH) because the tenant on the tenancy agreement (JR) didn't give the landlord an address, and the landlord didn't know anything about her. She flashed by but never spoke to the landlord.

The landlord's witness is the landlord's daughter, who testified that rent is currently \$316.81, which was effective July 1, 2023, payable on the 1st day of each month and there are no rental arrears.

The witness further testified that paragraphs 3 and 4 of the tenancy agreement refer to sublet or assignment. It states:

3. The Lessee covenants that the said lot shall be used only for the purpose of a mobile home site subject to such admission regulation or rules and regulations prepared by the Lessor.
4. The Lessee will not during the said term without the express written consent of the Lessor, assign or sublet the demised premises referred to herein or any part thereof. Consent by the Lessor shall be given only upon completion of a "Schule A", by the Lessee, hereto attached.

The tenant (JH) is not recognized as a tenant because his name does not appear on the tenancy agreement. However, the witness further testified that she issued some receipts and notices to him because that's how her mom did it and the witness didn't question it. Whoever brought cash would get the receipt, as agent for the tenant on the tenancy agreement, but that's all.

In mid-October, 2022 the witness realized that the tenant (JH) is not a tenant. The tenant (JR) was gone in 1998 and comes and goes every couple of months. There are subletting forms, but none were signed for the tenant (JH).

When asked that at the start of the tenancy, the landlord was aware the tenants were signing together, even though only 1 name was on the tenancy agreement, the witness testified that she cannot answer that. A tenant has to be on title or sign the tenancy agreement, and there's not 1 single piece of paper with his (JH) name on it.

The witness also testified that the tenant was served with a One Month Notice to End Tenancy for Cause by posting it to the door of the manufactured home and by registered mail, but does not recall when. A copy of the Notice has been provided by the tenant for this hearing, and it is dated April 23, 2023 and contains an effective date of vacancy of May 31, 2023. The reason for issuing it states: Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The material term was for having no insurance and for subletting. New rules were given out. All tenants were to have insurance by January 1, 2009, and the tenant was given notice of that on October 30, 2008.

On April 24, 2023 the landlord's witness served another One Month Notice to End Tenancy for Cause by registered mail, a copy of which has been provided by the tenants for this hearing. It is dated April 24, 2023 and contains an effective date of vacancy of May 31, 2023. The reasons for issuing it state:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

The tenant (JH) testified that he was a tenant from the first day, so didn't believe he would need to be on a subletting form for the landlord. The other tenant (JR) had said that he was a tenant so he didn't need to sign the tenancy agreement, and the tenant believed that, and paid rent for 28 years, usually paid in cash and received a receipt. At

the beginning of the tenancy, both tenants paid the rent, but it was the tenant (JH) who took the cash to the landlord's office. Initially, receipts were given in the name of the tenant (JR), but when she moved, the landlord's wife at the time changed it to his name. The tenant also owns 3 other manufactured homes in the park.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The tenant (JH) has not signed a tenancy agreement, and the tenant (JR) is assigning it without consent in writing, which is against the tenancy agreement. Rules that were made later are binding on the tenants, as per the tenancy agreement.

SUBMISSIONS OF THE TENANT'S ADVOCATE:

The tenant (JH) has been a tenant since day 1, and was always acknowledged by the landlord's wife. Further, having insurance was not part of the tenancy agreement.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Manufactured Home Park Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed both Notices, and I find that they are in the approved form and contain information required by the *Act*. The reasons for issuing them are in dispute.

I refer to *Guevara vs. Louie 2020 BCSC 380*, which was considered in a Judicial Review proceeding involving late payment of rent and a notice to end the tenancy, and whether the landlord was estopped from enforcing a notice to end the tenancy by the landlord's past conduct.

The Court stated that ending a tenancy is a significant request only in accordance with the *Act*, and if disputed, an Arbitrator is required to consider the totality of the evidence. The Court also stated that an Arbitrator is to consider that the context of Section 47 is serious enough to warrant eviction, and an Arbitrator is to consider 4 things:

1. the frequency of the defaults in the context of the length of the tenancy;
2. the length of default;
3. the content and communication between the parties in respect of any of the defaults; and
4. the expectations of the parties.

The Supreme Court also found that by not considering estoppel, the Arbitrator committed an error. Although that case dealt with repeated late rent, I find that it adequately sets out the principles of estoppel.

There is no question that the tenant (JH) has been living in the rental unit since the beginning of the tenancy and for 28 years, and has always paid the rent. In the circumstances, I find that the landlord is estopped from ending the tenancy now.

With respect to the allegation regarding insurance, in order to end a tenancy for breach of a material term, the landlord must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I have reviewed all of the evidence, and there is no such letter or written information from the landlord to the tenants.

Therefore, I cancel both Notices to end the tenancy, and the tenancy continues until it has ended in accordance with the law.

The landlord's application is dismissed.

Since the tenant has been successful in the application, the tenant is entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlord in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may serve the landlord with the order and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

The One Month Notice to End Tenancy For Cause dated April 23, 2023 is hereby cancelled.

The One Month Notice to End Tenancy For Cause dated April 24, 2023 is hereby cancelled, and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 60 of the *Manufactured Home Park Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: August 30, 2023

Residential Tenancy Branch