

Decision

Dispute Codes: CNC, FF

Introduction

This hearing dealt with an application by the tenant(s) for cancellation of the landlord(s)' 1 month notice to end tenancy for cause, in addition to recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant(s) are entitled to either or both of the above under the Act

Background and Evidence

Other matters in dispute between these parties are currently before another dispute resolution officer. The issues before me are limited to the two identified in the tenant(s)' application, as above.

The landlord(s) issued a 1 month notice to end tenancy for cause dated March 23, 2010. The tenant(s) document that the notice was found taped to their front porch on March 26, 2010. A copy of the notice was submitted into evidence, and reasons shown on the notice for its issuance are as follows:

Rental unit / site must be vacated to comply with a government order

Further evidence submitted by the parties includes, but is not limited to, a letter to the landlord(s) from an official representing the agricultural land commission dated March 17, 2010, which reads, in part, as follows:

Based on all the information currently available, I consider that you are in contravention of the Agricultural Land Commission Act (ALCA). Your immediate option in order to bring the property into compliance with the ALCA would be to:

1. Cease and desist the above noted operations and begin removal of all non-farm individuals that are not considered immediate family.

Should you choose to ignore this letter, I will be compelled to take further legal action which may include the recommendation of a monetary penalty and an Order to rehabilitate the property to a suitable agricultural capability.

Furthermore, I will also be recommending that the CEO consider each day to be a separate offence to the purposes of calculating a monetary penalty.

We would appreciate your cooperation and voluntary compliance.

Subsequent to the above letter, legal counsel acting on behalf of the landlord(s) corresponded with the tenant(s) by letter dated March 26, 2010 and advised them, in part, as follows:

Please be advised that we have received orders from both the Agricultural Land Commission and the [local government authority] requiring [the landlords] to begin removal of all non-farm individuals that are not considered immediate family from the Property.

The attached Notice to End Tenancy is given on the grounds that the manufactured home site must be vacated to comply with an order of the Provincial Agricultural Land Commission and an order of the [local government authority].

Following this, by way of e-mail to the tenant(s) dated March 29, 2010, the official representing the agricultural land commission (author of the above correspondence) stated in part:

In summary, as an Official I have not issued a “Stop Work Order” and the CEO has not issued an Order to remove / remediate. The Commission has advised the landowner that they are in contravention of the ALC Act. Given the circumstances of these cases where the landlord serves notice of eviction, the Commission feels it is the Land Owner’s responsibility to ensure compliance with all relevant legislation.

It is not the Commission’s position to cause any unreasonable hardship to either tenant or landowner. Our duty is to bring the property into compliance in a reasonable time frame. The Commission would respect the Residential Tenancy Board’s decision in this matter with regards to the time frame required for a tenant to vacate the property, as the end goal of having the property brought back into compliance would be met.

Thereafter, by letter to the tenant(s) dated April 1, 2010, an official representing the local government authority stated, in part, as follows:

.....the mobile home is legally non-conforming under the Local Government Act and not in violation of the Regional District’s Zoning Bylaw provisions.

With the occupied mobile home being classified as legal non-conforming, the Regional District has no further concerns with this matter and the enforcement file is concluded.

While there was limited discussion between the parties during the hearing in regard to whether agreement might be reached around a particular end date to tenancy, such agreement was unable to be achieved.

Analysis

Based on the documentary evidence and testimony of the parties, pursuant to section 40 of the Act, I find that the tenant(s) were served with a 1 month notice to end tenancy

for cause dated March 23, 2010. The tenant(s) filed an application for dispute resolution to dispute the notice on April 6, 2010.

Section 40(4) of the Act provides that a tenant who receives a notice under section 40 of the Act, may dispute the notice by making an application for dispute resolution within "10 days after the date the tenant receives the notice." Legal counsel representing the landlord(s) does not dispute that the tenant(s) filed an application for dispute resolution within 10 days of their receipt of the notice.

Section 40(1)(j) provides as follows:

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

(j) the manufactured home site must be vacated to comply with an order of a federal, a British Columbia, regional or municipal government authority;

Having considered all of the documentary evidence, as set out above, I am unable to conclude that either of the subject government authorities has presently issued an order to the landlord(s) that the "Rental unit / site must be vacated...."

Conclusion

Pursuant to all of the above, the landlord(s)' notice to end tenancy for cause is hereby set aside. The tenancy continues in full force and effect.

As the tenant(s) have succeeded in this application to have the notice cancelled, I hereby order that the tenant(s) may withhold \$50.00 from the next regular payment of monthly rent in order to recover the filing fee.

DATE: April 20, 2010

Dispute Resolution Officer