Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNR, LRE

Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

Considerable discussion occurred at the start of the hearing in relation to the applicant's standing in relation to the existing tenancy. The following facts were established:

- The applicant is the son of the manufactured home owner;
- The home owner is the tenant of the Park;
- The applicant is not a tenant of the Park, but has a tenancy with his mother, to rent the manufactured home; and
- That the applicant would act on behalf of his mother, the tenant, in relation to the application to cancel a 1 Month Notice to End Tenancy for Cause.

The application was amended to include the manufactured home owner's name and record the owner's son as her agent. The tenant, S. H. is the tenant of the manufactured home park; which is bound by the Manufactured Home Park Tenancy Act.

The tenant indicated several matters of dispute on the application and confirmed that the main issue to deal with during this proceeding was the 1 Month Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to set aside or cancel the Notice to End Tenancy for Cause and I dismissed the balance of the tenant's claim with liberty to re-apply.

On May 4, 2012, the landlord retrieved the tenant's evidence submission sent by registered mail on April 20, 2012.

I offered the landlord the opportunity to join this hearing to the landlord's application which is set for a hearing later in the month; the landlord did not wish to delay the tenant's hearing; the tenant was prepared to proceed. Therefore, I determined that I would hear the application to cancel the Notice ending tenancy; the landlord can determine if he wishes to proceed with his future hearing.

The landlord indicated he had evidence that was submitted for his hearing scheduled at a later date. I explained that I could not reference evidence that was in a file for a hearing set in the future. The landlord again declined the opportunity to adjourn so that the applications could be joined. I then determined that the tenant's application would proceed.

The application indicated the tenant had requested more time to cancel the Notice; however; the application was made within the required time-frame.

Issue(s) to be Decided

Should the 1 Month notice to End Tenancy for Cause issued on April 16, 2012, be cancelled?

Background and Evidence

The tenancy commenced in 2001, site rental of $200.00 is due on the first day of each month.

On April 14, 2012, the tenant received a copy of the 1 Month Notice to End Tenancy for Cause that had an issue date of April 16, 2012; the Notice was left in the tenant's mail box at her residential address. The landlord had post-dated the Notice.

The landlord and the tenant's agent agreed that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant was required to vacate the rental unit on May 16, 2012.

The reasons stated for the Notice to End Tenancy were that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; put the landlord's property at significant risk; that the tenant has caused extraordinary damage to the site or property/park; that the tenant has not done required repairs of damage to the site and that the tenant has breached a material term of the tenancy that was not corrected within a reasonable time after written notice to do so.

At the start of the hearing the landlord requested an Order of possession.

The parties agreed that the issue in dispute is an addition that the tenant's son has added to the manufactured home. The landlord and tenant's son agreed the following facts:

- an addition was built on to the manufactured home;
- that on February 21, 2012, a stop work Order was issued by the Cariboo Regional District;
- that the February 21, 2012, stop work Order was in relation to a roof that had been installed over the manufactured home and not the addition;
- that the tenant was required to obtain a demolition permit to comply with the Order;
- that a March 8, 2012; letter was issued by the Regional District staff to advise the building permit had expired on March 7, 2012 and that a new permit was required in order to ensure that the building complied with the approved plans;
- that on April 12, 2012, a letter was issued to the landlord referencing the building permit, that the building must come into compliance within the 30 days; and
- that there was no evidence of an on-site inspection by a building inspector since February 14, 2012, when the roof trusses were inspected.

The landlord stated that the reasons on the Notice were due to the unsightly nature of the addition; that the addition has reduced property values in the Park, that the risk is based upon the visual affect of the addition. The tenant built an addition and constructed a roof-line that is outside of the building permit issued. The tenant has also interfered with others in the Park but the landlord has not tracked specific events and was not prepared to provide dates of events or specific warnings given to the tenant.

A copy of an April 7, 2012, letter to the tenant's son from the landlord was supplied as evidence. The letter directed the tenant to complete tasks that were required to the bring the property up to standard; one of which was the requirement that the addition be removed as it does not conform to permit specifications.

The tenant supplied a copy of the Park Rules which indicate that porches and additions are to be approved by the owner and that building permits may be required. There was no dispute that the addition was pre-approved and that a building permit was obtained. The tenant did remove the trusses that were ordered to be removed in February, 2012.

The tenant provided a number of photographs of the addition that had been constructed. The tenant stated that he last had contact with the building inspector in February, 2012 and that neither he or his mother were given a copy of the letter sent to he landlord in April, which set out conditions for compliance.

The tenant has removed the trusses that were ordered removed in February; the tenant submitted that no order was made in February in relation to the addition. The tenant acknowledged that a stop work order has been placed on any further addition

construction and that he must obtain a new building permit before work may resume. The tenant stated he has been told he had 1 year to obtain another permit.

On April 10, 2012, the tenant's agent did attempt to meet with a building inspector; he was not available at the time.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence in support of the reasons indicated on the Notice ending tenancy.

The landlord could not provide any detail in support of the allegation that the tenant has interfered with or unreasonably disturbed others. The significant risk alleged by the landlord relates to property values; no evidence of this was before me. There was no evidence of any extraordinary damage caused to the site or park and no evidence of repair that is required.

There is no dispute that the tenant's son has built an addition for which a building permit was issued and permission granted by the landlord. The landlord did not give the tenant a copy of the April 7, 2012, letter issued by the Regional District staff, which instructed the landlord to ensure the addition was brought into compliance with the building permit. It is apparent that the landlord is treating the tenant's son as her agent; yet from the discussion that occurred at the start of the hearing, the son has not previously acted as agent for his mother. It is vital that the tenant be made aware of the issues that exist in relation to her tenancy and that the landlord communicate with the tenant or an agent that she appoints.

I was not convinced that the letter issued by the Regional District on April 12, 2012, required the tenant to obtain a building permit for the addition within 30 days; the tenant was not given a copy of this letter and has not had any contact with the building inspector. There is no doubt that the tenant is required to bring the addition into compliance, but I find that the letter issued on April 12, 2012, fails to provide adequate direction and that the failure to supply a copy of that letter to the tenant did not provide the tenant with an opportunity to respond.

Therefore, I find that the Notice ending tenancy issued on April 16, 2012, is of no force and effect.

The parties were encouraged to obtain clear instructions from the Regional District staff as to what must be altered, the time-frames of any action required; whether the order is in relation to the trusses that were last inspected or the addition and the need for a current inspection to clarify deficiencies. The absence of an inspection of the construction since February 2012, leads me to suspect that the April 12, 2012, letter was issued in relation to the roof trusses which the tenant stated had since been removed.

The landlord will be at liberty to issue an another Notice ending tenancy should the tenant, S.H. be fully informed of the need to take action and that any non-compliance is determined to be within the reasons given on a Notice to end tenancy for cause.

I pointed out that the landlord has not been given formal instruction that the tenant has assigned her son as her agent; however, the tenant's son did act as her agent during this hearing.

I have enclosed a copy of the *Guide for Landlords and Tenants in British Columbia* for each of the parties.

Conclusion

The Notice ending tenancy for cause issued on April 16, 2012, is of no force and effect. The tenancy will continue until it is ended as provided by 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 *Residential Tenancy Act*.

Dated: May 07, 2012.

Residential Tenancy Branch