Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OLC, AS, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; an order requiring the Landlord to comply with the *Manufactured Home Park Tenancy Act (Act)* or the tenancy agreement; for an order authorizing the Tenant to assign the tenancy or sublet the rental unit; and to recover the fee for filing an Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make submissions to me.

The Landlord and the Tenant agree that the Application for Dispute Resolution and the Notice of Hearing were mailed to the Landlord in the latter part of October of 2013.

The Tenant submitted documents to the Residential Tenancy Branch on October 30, 2013, copies of which were placed in the Landlord's mail box on that date. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On October 31, 2013 the Landlord submitted a copy of a tenancy agreement for this site to the Residential Tenancy Branch, a copy of which was mailed to the Tenant on November 01, 2013. The Tenant acknowledged receipt of the agreement and it was accepted as evidence for these proceedings. The Tenant stated that she did not need more time to consider the evidence.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 40 of the *Act*, be set aside; is there a need for an Order requiring the Landlord to comply with the *Act;* and should the Tenant be given authorization to sublet the site?

Background and Evidence

The Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution proceeding on September 19, 2013, at which the parties agreed to settle that dispute under the following terms:

1. The tenant agreed to have the electrical inspector attend to her manufactured home to ensure that the load calculation on the electrical panel is not exceeding 70 amps; the tenant is to contact **BC Safety Authority** to arrange for that inspection **no later than September 24, 2013**. If the tenant does not contact BC Safety Authority to make the required inspection by that date, the landlord is granted permission to make arrangements for that inspection on behalf of the tenant.
2. The tenant will provide a copy of the electrical inspection report to the landlord.
3. If the electrical inspector has calculated that the load on the tenant's electrical panel is greater than 70 amps, then the tenant is required to hire a licensed electrician and have the load reduced to the required 70 amps. This work must be completed **no later than October 31, 2013**.
4. The tenant agreed that if the load calculation is found to be greater than 70 amps on her electrical panel then she will pay the landlord the cost of the electrical bill dated January 28, 2013, in the amount of $83.72.
5. The tenant agreed to pay the landlord $50.00 for the cost of filing their application. This is to be paid by October 19, 2013.
6. If the tenant fails to comply with this settlement agreement. The landlord is at liberty to reapply for an order of possession and monetary compensation.

The Tenant stated that she phoned the electrical inspector for her community and was told they would not complete a "load test" and that she would have to hire an electrician to perform that test. She stated that she hired an electrician; that her electrical panel was inspected on September 24, 2013; that the electrician told her the electrical panel was compliant with the local building code; and that he determined the total amps was 65.21. The Tenant submitted a copy of a letter from an electrician that confirms the total amps.

The Landlord stated that he phoned a building inspector with the Cowichan Valley Regional District whom I will refer to as "D.H.", who advised him that a "load inspection" would have to be completed by an electrician and that an electrical permit would be required if the electrician determined that changes to the electrical system were required. The Landlord stated that "D.H." told him that the load on an electrical panel cannot be more than 80% of the total load capacity of the panel, which he interprets to mean that the amps on the Tenant's panel cannot exceed 56 amps.

The Tenant stated that on October 31, 2013 "D.H." spent approximately 2.5 hours inspecting her home and he did not tell her to make any repairs.

The Landlord stated that he spoke with "D.H." after "D.H." inspected the Tenant's home and he was not informed of any specific safety concerns. He stated that "D.H." told him electrical changes had been made in the past without a proper permit; that the baseboard heaters that had been installed in the unit were 2650 watts; and that a home of this size should have baseboard heaters that are 4000 watts. The Landlord believes that the unpermitted work occurred when the heating system was converted from a gas furnace to electric baseboard heaters. The Landlord is concerned that the Tenant may supplement her heat with space heaters, which would increase the load on the electrical panel.

The Tenant stated "D.H." told her that the baseboard heaters that had been installed in the unit were 2650 watts; that he told her a home of this size should have baseboard heaters that are 4000 watts; and that he did ask whether a permit has been issued to replace the baseboard heaters. She stated that she told "D.H." that she believed a permit had been issued and that "D.H." is investigating this issue. She stated that she does not use space heaters.

The Landlord stated that "D.H." also told him that the Tenant recently had $1,000.00 worth of electrical work completed without a permit. The Tenant stated that on October 22, 2013 an electrician moved the main power feed moved from the side of her home to underneath the trailer and that her receipt shows she paid an $88.00 permit fee.

Neither party submitted documentary evidence from "D.H.".

The Landlord stated that he has not hired an electrician to inspect the manufactured home since September 19, 2013. The parties agree that an electrician did inspect the home on December 11, 2012, at which time the electrician noted that the electrical panel had been upgraded to 100 amps without upgrading the service feeder. A copy of the receipt for this work was submitted in evidence by the Tenant, in which the electrician's findings are reported.

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was served to the Tenant on October 17, 2013. The Tenant stated that she submitted a copy of this Notice to the Residential Tenancy Branch but I did not have it before me at the time of the hearing. The Landlord acknowledged that the Notice was served to him as evidence for these proceedings and the parties were able to consent to the information on that Notice.

The Landlord and the Tenant agree that the One Month Notice to End Tenancy for Cause was signed by the Landlord and that it declared the Tenant must vacate the rental unit by November 20, 2013. The parties agree that the Notice indicated the Landlord wished to end the tenancy because the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk; that the Tenant has not done required repairs to the manufactured home/site; and that the

Tenant has not complied with an order under the legislation within 30 days of receiving the order.

The Landlord stated that he served this Notice to End Tenancy, in part, because he is concerned that the electrical system in the manufactured home is unsafe.

The Landlord stated that he served this Notice to End Tenancy, in part, because he has not received a copy of the of the electrical inspection report which the Tenant agreed to provide in their settlement agreement of September 19, 2013.

The Tenant stated that on October 07, 2013 she provided the Landlord with a copy of the electrician's report, dated September 24, 2013. The Landlord acknowledges receiving this report but he contends that it is a "load calculation report" and not an "electrical inspection report".

The Landlord stated that he served this Notice to End Tenancy, in part, because the Tenant has not paid the $83.72 she agreed to pay in their settlement agreement of September 19, 2013.

The Tenant is seeking an order requiring the Landlord to comply with the *Act*. Specifically, she is seeking to prevent the Landlord from serving her with another Notice to End Tenancy for these same issues, which she contends would breach her right to the quiet enjoyment of the rental unit.

The Tenant is seeking authorization to sublet the tenancy. The Landlord and the Tenant agree that the Tenant provided the Landlord with a written request to sublet and that the Landlord denied that request, in writing. Neither party submitted a copy of the application to sublet.

The Tenant stated that she submitted a copy of the Landlord's written response to her request to the Residential Tenancy Branch and that she served a copy to the Landlord as evidence. The Landlord stated that he did not receive a copy of the document and I did not have that document with me at the time of the hearing. The Tenant introduced the document orally and the Landlord agreed with the content of the document.

The parties agree that the Landlord's written response informed the Tenant that her application to sublet the rental unit to a couple with a young child was being denied for the following reasons:

- The Tenant did not provide the Landlord with a complete copy of the RTB request to sublet form
- The *Act* stipulates a tenancy can be sublet only if the tenancy agreement permits a sublet and their tenancy agreement does not specify that the tenancy can be sublet
- The park rules do not permit subletting
- There is only one parking space assigned to the site

- The manufactured home is currently occupied by one person and the well and utilities at the manufactured home park are currently at maximum capacity
- The Tenant is attempting to capitalize on the low pad rent, to the disadvantage of the Landlord
- The Landlord has just served a Notice to End Tenancy
- The Landlord has had poor experience with subletting in the past so does not want to permit further subletting.

I specifically note that the parties agreed to the essential content of the Landlord's written response and the aforementioned reasons are not intended to reflect the precise wording of the response.

Section 14 of the tenancy agreement submitted in evidence declares that the tenancy agreement is subject to the park rules and that the tenant agrees to abide by the park rules. The Tenant submitted a copy of the park rules she signed at the start of the tenancy. One of these rules reads: "In the event of a sale, rental, or sublease, of a trailer the prospective purchaser/renter must be interviewed and approved by the Park Owner or Manager before completion of the transaction".

The Landlord and the Tenant agree that approximately two years ago the Tenant was provided with an updated copy of the park rules, a copy of which was not submitted in evidence. The parties agree that one of the new park rules stipulates that the tenancy cannot be sublet without the written permission of the Landlord.

The Landlord stated that he denied the Tenant's application to sublet the tenancy, in part, because the Tenant only provided him with the first 5 pages of the 6 page RTB form used for this request. I note that the 6th page of the request for assignment or subletting is the page which provides information regarding the landlord's rights and responsibilities in regards to responding to the request.

Analysis

I find that the Landlord has submitted insufficient evidence to show that this rental unit is unsafe or that it poses a safety risk to any person or to the Landlord's property. In reaching this conclusion I was heavily influenced by the undisputed evidence that "D.H", who is a building inspector, inspected the rental unit and that he did not report any safety concerns to the Landlord or the Tenant.

I specifically note that a rental unit is not rendered unsafe simply because electrical repairs were completed without a permit. It is entirely possible for a qualified electrician to make repairs and/or upgrades that comply with all building codes without complying with the requirement to apply for a permit.

I specifically note that there is no evidence before me that the electrical panel in the home currently exceeds the legal capacity of the panel. In reaching this conclusion I was influenced by the letter from the electrician who inspected the rental unit on September

24, 2013 and determined that the total amps were 65.21. I find this letter is a more reliable indicator of the current condition of the manufactured home than the information provided by the electrician who inspected the panel on December 11, 2012, simply because it is more recent. I was also influenced by the absence of documentary evidence that corroborates the Landlord's testimony that the load on an electrical panel cannot be more than 80% of the total load capacity of the panel, which the Landlord interprets to mean that the amps on the Tenant's panel cannot exceed 56 amps.

In reaching this conclusion I have placed little weight on the undisputed evidence that the baseboard heaters in the rental unit are inadequate to heat a home of this size, as there has been no evidence to show that under heating a home poses a safety risk. In determining this particular matter, I find that the Landlord submitted no evidence to support his concern that the Tenant is using space heaters; the Landlord submitted no evidence to show that using space heaters poses a safety risk; and the Tenant stated that she does not use space heaters.

On the basis of the undisputed evidence that the Cowichan Valley Regional District would not complete a load calculation on the electrical panel, I find it reasonable to conclude that the Regional District would also not produce an electrical inspection report. I find that the Tenant acted reasonably and responsibly when she paid an electrician to conduct a "load calculation" on her electrical panel and when she provided the Landlord with a copy of those results. I find that the results she provided to the Landlord satisfies this term of the settlement agreement.

The settlement agreement clearly indicates that the Tenant will pay $83.72 to the Landlord only if the load calculation on the electrical panel is found to be greater than 70 amps. As the load calculation was not found to be greater than 70 amps, I find that the settlement agreement did not obligate the Tenant to pay $83.72 to the Landlord.

As I have determined that the Landlord has submitted insufficient evidence to end this tenancy pursuant to section 40 of the *Act*, I set aside the One Month Notice to End Tenancy, dated October 17, 2013, and I find that this tenancy shall continue until it is ended in accordance with the *Act.*

As the Landlord has attempted to end this tenancy on two occasions for issues related to electrical service in the manufactured home, it is quite possible that an arbitrator would determine that another unsuccessful attempt to end the tenancy for the same reason would be a breach the Tenant's right to the quiet enjoyment of the rental unit, in which case the Tenant might be entitled to financial compensation. The Landlord is therefore cautioned not to attempt to end this tenancy again without supportable grounds.

I am not inclined to issue a blanket order preventing the Landlord from attempting to end the tenancy in the future for issues relating to electrical service in the manufactured home, however, as electrical service is a legitimate safety concern and the Landlord has a right, in my view, to ensure that the electrical service in the manufactured home is not altered in a manner that jeopardizes the manufactured home park.

I do order that the Landlord must not serve the Tenant with another One Month Notice to End Tenancy for Cause for issues arising from electrical service in the manufactured home unless:

- The Landlord has documentation from "D.H." or a person of similar authority with the Cowichan Valley Regional District and/or documentation from two qualified electricians that specifically states that the electrical service in the manufactured home seriously jeopardizes the safety of an occupant of the manufactured home park or that it puts the Landlord's property at risk
- The aforementioned documentation clearly specifies what actions need to be taken to correct an electrical deficiency that poses a risk to person or property
- The Tenant is provided with a copy of the documentation that outlines the actions that need to be taken to correct the identified deficiencies
- The Landlord has documentation from "D.H." or a person of similar authority with the Cowichan Valley Regional District and/or documentation from a qualified electrician that shows the deficiencies have not been corrected within one month after the documentation was received by the Tenant.

Section 28(1)(c) of the *Act* stipulates that a tenant may assign a tenancy agreement or sublet a manufactured home site only if the tenancy agreement authorizes the assignment or sublease. Section 14 of the tenancy agreement submitted in evidence declares that the tenancy agreement is subject to the park rules and that the tenant agrees to abide by the park rules.

On the basis of the park rules submitted in evidence and the undisputed evidence that the new rules permit a Tenant to sublet, with the written consent of the Landlord, I find that the park rules do permit subletting, contrary to the position outlined in the Landlord's response to the application to sublet.

As the tenancy agreement includes a term that requires the Tenant to abide by park rules and the park rules permit a sublet, under certain conditions, I find that the tenancy agreement effectively authorizes tenants to sublet, in some circumstances. I therefore find that the Tenant does have the right to sublet her manufactured home in accordance with section 28(1)(c) of the *Act* and that the Landlord does not have the right to withhold consent on the basis of section 28(1)(c) of the *Act.*

Section 28(3) of the *Act* stipulates that a landlord may withhold consent to sublet a tenant's interest in a manufactured home site only in the circumstances prescribed by section 48 of the *Manufactured Home Park Regulation*, which are:

- the tenant has agreed in the tenancy agreement not to sublet
- there is not at least one proposed subtenant who meets the age requirement in a park where every manufactured home site is reserved for rental to a tenant who has

reached 55 years of age or to 2 or more tenants, at least one of whom has reached 55 years of age, as set out in section 10 (2) (b)(i) of the Human Rights Code

- the proposed subtenant does not intend to reside in the manufactured home and intends to use the manufactured home for business purposes
- the tenancy agreement is a monthly tenancy and the manufactured home has been removed from the manufactured home site or destroyed
- the landlord, as a result of being unable to contact one or more references provided under section 44 (3) (e), (f) or (g) *[required information]*, has insufficient information to make a decision about the request
- the home owner owes the landlord arrears of rent or an amount due under an order of the director
- the manufactured home does not comply with housing, health and safety standards required by law.

As an inadequate number of parking spaces are not grounds to withhold consent to sublet as specified by the *Manufactured Home Park Regulation*, I find that the Landlord cannot withhold consent to sublet simply because there is only one parking site assigned to this site.

As the number of occupants in a manufactured home are not grounds to withhold consent to sublet as specified by the *Manufactured Home Park Regulation*, I find that the Landlord cannot withhold consent to sublet simply because two adults and a child wish to sublet the rental unit. I find that particularly true when the Tenant's tenancy agreement indicates there will be three occupants.

As the well and utility capacity of the manufactured home are not grounds to withhold consent to sublet as specified by the *Manufactured Home Park Regulation*, I find that the Landlord cannot withhold consent to sublet on the allegation that the park is at full capacity.

As financial gain are not grounds to withhold consent to sublet specified in the *Manufactured Home Park Regulation*, I find that the Landlord cannot withhold consent on the basis that the Tenant will "capitalize on the low pad rent".

As previous difficulties with renting that are not related to the prospective subtenant are not grounds to withhold consent to sublet as specified by the *Manufactured Home Park Regulation*, I find that the Landlord cannot withhold consent on the basis that he simply does not wish to permit additional subletting.

As the Landlord has failed to establish that he had grounds to serve the Notice to End Tenancy or that the manufactured home does not comply with housing, health and safety standards, I find that the service of the Notice to End Tenancy is not grounds to withhold consent to sublet.

As none of the reasons the Landlord has identified for denying the Tenant's application to sublet comply with section 48 of the *Manufactured Home Park Regulation,* I find that

the Landlord has not established that he has the right to deny the request pursuant to section 48.

On the basis of the testimony of the Landlord and in the absence of evidence that clearly refutes this testimony, I find that it is possible that he only received 5 pages of the 6 page RTB form used to request a sublet. I therefore find that the request to sublet was not served in the form approved by the director.

Section 47 of the *Manufactured Home Park Regulation* stipulates that if a request for consent to assign or sublet was not served in the form approved by the director, the landlord of the park must either consent to the request; notify the home owner in writing that consent to the request is withheld on one or more of the grounds under section 48; or advise the home owner promptly that only a request for consent that complies with section 44 will be considered. As the Landlord opted to respond to the request with a written denial and he did not specifically inform the Tenant that the request will only be considered if he is provided with a complete request on the proper form, I find that the Landlord effectively accepted the format of the request.

As the Landlord has failed to provide reasons for withholding consent to sublet that comply with the *Act* or the *Regulation*, I hereby grant the Tenant permission to sublet the home to the parties named in her request.

Conclusion

As the Tenant's Application for Dispute Resolution has merit, I authorize the Tenant to deduct $50.00 from one monthly rent payment, in compensation for the fee for filing this Application for Dispute Resolution. 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: November 08, 2013

Residential Tenancy Branch