



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1027110 BC LTD (Weststone) and Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenants: CNC

For the landlords: OPC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Manufactured Home Park Tenancy Act ("Act").

The tenants applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause ("Notice").

The landlords applied for an order of possession for the rental unit pursuant to the Notice and for recovery of the filing fee paid for this application.

The tenant, his advocate and witness, the landlord's legal counsel, the landlord's agent, and the landlord's witnesses attended the telephone conference call hearing. The parties' respective witnesses were excused from the hearing until they were called in to testify.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter all participants were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, make submissions to me, and respond to the other's evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to

and considered only the relevant evidence regarding the facts and issues for this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural matters-

At the outset of the hearing, the parties agreed that their respective two applications, which were scheduled for two hearings before me, back to back, could be consolidated and heard together, as the evidence and issues would be the same for the respective applications, which dealt with 2 separate manufactured home sites in the same manufactured home park. As a result, both applications were considered in this Decision.

Additionally, prior to the hearing, the landlord's legal counsel had requested permission to have a court reporter attend the hearing, and permission was granted on an interim basis, as the undersigned was not available when the request was made. Upon my return, I did notify Residential Tenancy Branch ("RTB") staff that I would have no objection to the landlord's legal counsel having a court reporter attend the hearing; however, the legal counsel advised that he had not been informed.

The legal counsel then stated that he would prefer to record the hearing himself and to send the recording to the court reporter. I declined that request and reaffirmed that no private recordings were to be made of the hearing, pursuant to section 9.1 of the Rules.

It is also noted that after receiving the landlord's 1st Notices, dated October 8, 2015, the tenants received 2nd Notices for the 2 manufactured home sites, dated October 28, 2015, listing the same cause. The tenants filed an amended application to dispute the 2nd Notices, and I have accepted their amended application.

Issue(s) to be Decided

1. Are the tenants entitled to an order cancelling the landlord's Notices?
2. Are the landlords entitled to an order of possession for the manufactured home sites and to recovery of the filing fee paid for this application?

Background and Evidence

According to the tenant, their tenancy began nearly 20 years ago, and at that time, there was another landlord. During 2015, the manufactured home park changed ownership.

Pursuant to the Rules, the landlord proceeded first in the hearing and provided evidence in support of issuing the tenants the Notices for the two manufactured home sites. The Notices listed an effective vacate date of November 30, 2015, and all Notices listed as alleged cause that the tenants are repeatedly late in paying rent.

The landlord's agent explained that the tenants were issued 2 different Notices as there was a possibility that an incomplete Notice was served on October 8, 2015, and therefore he wanted to ensure that the tenants had received a full Notice.

Landlord's witness, "PG"-

The witness submitted that he worked for the original landlord as general manager, who bought the manufactured home park in 1994, a company owned by the witness' father. The witness submitted further that during the tenancy, there had been an on-site manager and that the arrangement with the tenants in the park was to deliver the rent cheques to the on-site manager's box on the 1st day of the month. The witness submitted further that if the rent cheques were not paid on the 1st day of the month, he would send out 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the late paying tenants.

The witness submitted further that there were no exceptions to the rent being paid on the 1st day of the month, as per their tenancy agreements and that he would walk around the park collecting the cheques from the late paying tenants. The witness stated that he was constantly "chasing" the tenants for the rent cheques and issued at least three 10 Day Notices to the tenants, at the end of 2014 and in the beginning of 2015. The witness submitted further that he was constantly providing verbal warnings to the tenants about the late rent payments.

The witness submitted further that although the manufactured home park changed ownership as of February 27, 2015, he continued to work for and collect rent cheques through May 2015. A copy of the notice of ownership change was submitted into evidence by the tenants. The notice of ownership change also mentioned that PG would still be in charge of rent collection and day to day operations of the park.

A copy of another notice of new ownership was also submitted by the tenants, which informed the tenants of the park to make their cheques payable to the new landlord's corporate name and that they would be collected by PG.

The landlord referred to text messages located in the tenants' evidence to confirm the late payments of rent in January and February 2015.

Cross examination of PG by the tenant's advocate-

The landlord's witness stated that a verbal warning was given every month the rent was late, in response to the tenant's advocate's question about when a verbal warning was given.

The tenant's advocate queried the witness as to when he issued a 10 Day Notice to the tenants, with a response that the months were January, February, and March 2015. The witness did not provide a clear answer as to where a copy of the Notices might be, when questioned.

Landlord's witness "KP"-

KP submitted that she is the executive assistant for the new landlord, has worked for them since April 15, 2015, and ensured that the notices of a change in address were provided to the tenants.

Cross examination of KP by the tenant's advocate-

KP confirmed that she does not directly collect the monthly rent and was not responsible for upkeep of the rent rolls.

Landlord's witness "CN"-

CN confirmed that she is employed with the current landlord as a non-resident manager.

CN submitted that she began collecting the rent as of June 2015, door to door for that month; however, as she was on vacation another employee collected rent for July 2015 and CN's mother collected rent for August 2015.

CN submitted that she recorded the rent payments when received, as shown by the landlord's evidence submitted, which showed late payments by the tenants.

In response to my question, CN confirmed that the tenants had not been issued written warnings about late payments of rent and that she attends the drop box in the park at midnight on each 1st day of the month, as a way verify whether a payment has been paid late.

Cross examination of CN by the tenant's advocate-

The witness confirmed that she pre-writes some receipts and not others, as circumstances dictate.

Tenant's submissions-

The tenant submitted that the on-site manager did not work for the landlord beyond 2014, and did not collect the rent cheques. The tenant submitted further that the landlord's agent at the time, PG, came around to his home every month to collect the rent cheques, which could be on the 1st, 2nd or 3rd day of the month. The tenant submitted further that when PG wanted to come around to collect the rent cheques, he would text the tenant to find out if he was home, whatever day PG chose to collect the rent, he paid then and never avoided making payments, a system long in place.

The tenant denied that there was a drop box to deposit rent cheques, until they were informed by the new landlord that one was installed as of July 31, 2015.

The tenant denied ever receiving 10 Day Notices from PG or that PG chased him down to collect the rent, further stating that there was no other option to pay the rent while under previous ownership.

The tenant submitted further that the landlord's collection methods do not accurately reflect rent payments, as he often drops his rent payment in the drop slot at the office manufactured home after 7:00 p.m. on the 1st day of the month, challenging CN's statement that she collected rent cheques up to midnight on the 1st day.

The tenant submitted further that he had been paying rent in the same way for 20 years, and had never been at issue until recently, submitting further that there had never been a standard way to pay rent.

The tenant submitted that the landlord's agent CN also goes door to door to collect rent.

The tenant denied being late on rent payments, with the exception of October 2015, when he was sick. The tenant confirmed that he received a 10 Day Notice for October as a result, but that rent was paid shortly afterwards.

Tenant's witness-

The tenant's witness stated that she resides in the manufactured home park here, and stated that she has placed her rent cheques in the on-site manager's box earlier in the year, but that when PG collected rent, he would come around on the 1st, 2nd, or 3rd day of the month. The witness submitted further that when the new owner took over, their employees would still come door to door to collect rent.

The landlord's agent SM said he had the landlord install a drop box and had a notice to the tenants to that effect generated and issued to the tenants. The landlord's agent said that he had CN attend the drop box at midnight on the first day of the month to collect and notate rent payments.

The tenants' relevant documentary evidence included, but was not limited to, the two Notices, the 10 Day Notice, rent rolls, notices to the residents regarding change in ownership and rent payment methods, copies of rent cheques, and receipts and statements, tenant' bank statements.

Analysis

Section 40(1)(a) of the Act authorizes landlords seek an end of a tenancy by issuing a notice if a tenant is repeatedly late in paying rent. The landlord bears the burden of proving the cause listed on his Notice.

Residential Tenancy Branch Policy Guideline #38 states that three late payments of rent are the minimum number sufficient to justify a notice under these provisions. The landlord relies on this guideline to justify their Notice.

In reviewing the landlord's evidence, I am not convinced that this landlord or the previous landlord owning the property through February 2015 had a mechanism or system in place to accurately and effectively record rent payments. For instance, since the current landlord has taken ownership, I heard testimony that four separate agents collected rent for the landlord, bringing a total of five different agents, including the on-site manager, collecting rent for the relevant time period, since January 2015. The tenant's evidence shows that the landlord issued receipts for some rent payments, and

other payments went undocumented with a receipt, in particular the months of April, July, and August 2015.

Additionally, the residents of the park have been informed that the on-site manager would be on the premises to collect rent from 3:00 p.m. to 7:00 p.m., only, which I do not find would be a convenient time for all residents.

The tenant submitted that since the landlord's agent PG has ceased collecting the rent and since the residents have been given instructions that a mail slot is now available for dropping off the monthly rent after hours, he paid his rent on the 1st day of the month after hours, with the exception of October 2015, when he was ill. The landlord's witness CN submitted that she attends the office at midnight on the 1st day of the month; however, I remain unconvinced in the absence of corroboration, as I find that disputed testimony does not sufficiently meet the bearer's burden of proof. In numerous instances during the hearing, the landlord referred to the tenant's evidence to prove the merits of their Notices, instead of their own evidence, and the tenants' witness supported that CN has gone to the manufactured homes to collect rent cheques.

Further, I am not convinced by the landlord's evidence that the previous landlord ever had issue with the tenant paying rent late, as I accept the tenant's evidence that the landlord's agent, PG, collected the rent on the 1st, 2nd, or 3rd day of the month. In making this conclusion, I relied on the failure of the landlord to produce any written warnings issued to the tenant and the tenants' witness supporting the same. Further I do not accept that agent PG issued the tenant a 10 Day Notice in January, February, or March 2015, as stated, or any written warnings to the tenant that he had been failing to pay the rent in a timely manner or that his tenancy would be in jeopardy upon any further late payments. In making this determination, I relied upon the fact that the landlord failed to produce a copy of any 10 Day Notice, other than the Notice for October 2015 issued by landlord's agent SM or copies of written warnings.

Due to the above, I find the landlord has submitted insufficient evidence to show that the tenants are repeatedly late in making rent payments, as I find the evidence supports that the landlord could prove only that the tenants made a late payment only in October 2015, as confirmed by the tenant.

As a result, I find the landlord's two 1 Month Notices to End Tenancy for Cause, dated October 8 and October 28, 2015, for an effective move out date of November 30, 2015, are not valid and not supported by the evidence, and therefore have no force and effect. I order that the Notices be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

I note that the tenants are now aware that this landlord requires that the monthly rent be paid on or before the 1st day of the month; however, I am not prepared to issue any warnings to the tenants regarding future late payments, due to being unconvinced the landlord has a mechanism or system in place to accurately and effectively record rent payments.

Conclusion

I grant the tenants' application seeking cancellation of the landlord's two 1 Month Notices and the Notices are hereby cancelled with the effect that the tenancy will continue until ended in accordance with the Act.

As I have granted the tenants' application, I dismiss the landlords' application requesting an order of possession for the manufactured home sites.

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: December 14, 2015

Residential Tenancy Branch

