



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants' Application made August 22, 2016: OLC; O
Amended September 23, 2016: OLC; O; CNL; CNC

Introduction

This Hearing was scheduled to be heard by teleconference at 1:30 on October 12, 2016. This is the Tenants' Application for an order that the Landlords comply with the Act, regulation or tenancy agreement; "other" orders; to cancel a notice to end tenancy for landlord's use; and to cancel a notice to end tenancy for cause.

Both parties signed into the Hearing and gave affirmed testimony.

The Tenants served the Landlords with their Notice of Hearing documents on August 26, 2016, and their amended Application on September 23, 2016. The Landlords retained new legal counsel on September 23, 2016. The Landlords' new legal counsel stated that she received the Tenants' documents on September 26, 2016.

The Landlords served the Tenants with their documentary evidence late; however, the parties agreed to proceed with the Hearing and did not require an adjournment.

At the outset of the Hearing, the Tenants stated that the Landlords have fixed the deck and therefore withdrew their application for an order that the Landlords comply with the Act, regulation or tenancy agreement and "other" orders.

Preliminary Matters:

1. Does the Residential Tenancy Act have jurisdiction to hear the dispute between the parties?

A copy of the "Rent to own contract or lease agreement" between the parties was provided in evidence. There are terms in the contract which provide, in part:

Whereas, the parties have agreed that Renter shall take possession of the property on 04/15/16 and have the use of the property until this agreement is terminated or up for review on 04/15/2017, and

Whereas, Renter or Leaser and Owner intend that the property shall be in the care and control of the Renter upon the full completion of this agreement, but that the Owner retains all rights of the property,

At this time No monies are being taken for the purchase of the mobile, this might be negotiated at a later date.

[reproduced as written]

Residential Tenancy Policy Guideline 27 provides the following, in part, with respect to jurisdiction under the Residential Tenancy Act and Manufactured Home Park Tenancy Act (the "Acts"):

5. TRANSFER OF AN OWNERSHIP INTEREST

If the relationship between the parties is that of seller and purchaser of real estate, the Legislation would not apply as the parties have not entered into a "Tenancy Agreement" as defined in section 1 of the Acts. It does not matter if the parties have called the agreement a tenancy agreement. If the monies that are changing hands are part of the purchase price, a tenancy agreement has not been entered into. Similarly, a tenancy agreement is a transfer of an interest in land and buildings, or a license.

The interest that is transferred, under section 1 of the Acts, is the right to possession of the residential premises. If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into. In such a case the RTB may again decline jurisdiction because the Acts would not apply.

In the case of a tenancy agreement with a right to purchase, the issue of jurisdiction will turn on the construction of the agreement. If the agreement meets either of the tests outlined above, then the Acts may not apply. However, if the parties intended a tenancy to exist prior to the exercise of the right to purchase, and the right was not exercised, and the monies which were paid were not paid towards the purchase price, then the Acts may apply and the RTB may assume jurisdiction. Generally speaking, the Acts apply until the relationship of the parties has changed from landlord and tenant to seller and purchaser.

[reproduced as written]

The parties agreed that the Tenants pay rent to the Landlords in the amount of \$985.00, which includes the pad rent. The Landlords then pay the pad rent of \$370.00 to the manufactured home park. The parties also agreed that no money has exchanged hands towards the purchase of the manufactured home.

Based on the testimony of both parties, I find that the Tenants did not exercise a right to purchase the property and that no monies were paid towards the purchase price. Therefore, I accept jurisdiction and find that this tenancy falls under the Residential Tenancy Act.

Issue(s) to be Decided

Are the notices to end the tenancy valid notices, or should they be cancelled?

Background and Evidence

The Tenants moved into the rental unit in March, 2013. Rent is due on the 15th day of each month.

The Tenants have a home business making culinary sauce and rubs, which they produce in a shed on the rental property.

The Landlords gave the following testimony and submissions:

On August 26, 2016 the Landlords issued and served a two month Notice to End Tenancy for Landlord's Use, by posting it to the Tenants' door. The Landlords stated that they do not intend to move into the rental unit, but their son might. They testified that they gave the Tenants this notice at the Tenants' request so they could get compensation under the Act.

The Landlords' counsel NA submitted that there is a term in the tenancy agreement that prohibits the Tenants from running a business in the rental unit. She stated that there is also a term in the manufactured home park Rules and Regulations prohibiting Tenants from operating a commercial enterprise without prior written approval. NA submitted that the Tenants were provided with a copy of the Rules and Regulations and that they signed an acknowledgement of receipt, a copy of which was provided in evidence.

NA stated that on August 21, 2016, the Landlords gave the Tenants a "notice to comply" with the tenancy agreement and the Rules and Regulations and to cease and desist all

business activities immediately. The Landlords provided a copy of this document in evidence.

The Landlord CS testified that she works for an insurance company and that she was concerned that the Tenants' business activities would endanger the Landlords' insurance. CS testified that she sought a "temporary specialty risk" from her insurer, but that her request was denied. As a result, CS testified that her insurance is in jeopardy.

NA stated that on September 16, 2016, the Landlords' former legal counsel wrote another letter to the Tenants demanding that they immediately cease and desist conducting their sauce making business at the rental property. A copy of that letter was provided in evidence. The Tenants' responded to the letter on September 21, 2016, asking for copies of any documents stating that the rental property is uninsurable. The Notice to End Tenancy for Cause was issued and served on September 21, 2016, by posting the Notice to the Tenant's door.

NA submitted that the Tenants are still running the business without the Landlords' consent, contrary to the tenancy agreement, the park Rules, the Landlords' insurance policy and the Landlords' mortgage holder's requirements.

NA asked for an Order of Possession, to be effective November 15, 2016.

The Tenants gave the following testimony and submissions:

The Tenants testified that they never intended to rent to own the rental unit. They stated that the Landlords drew up the agreement in that fashion to circumvent the Park Rules, which did not allow renting. The Tenants stated that they didn't pay much attention to the rental agreement because it was not to their benefit, only to the Landlords'.

The Tenants testified that they advised the Landlords that they were running a business when they first looked at the rental unit. They stated that they told the Landlords they were happy to see the shed and that they gave the Landlords some samples of their product to try. The Tenants submitted that the Landlords did work at the rental property in 2014 and would have seen the Tenants' supplies and their industrial sized grinder.

The Tenants stated that the Park manager also knew the Tenants were carrying on a business because he helped them to move in 3 big chest freezers.

The Tenants acknowledged that they signed a document acknowledging receipt of the park Rules and Regulations, but stated that they did not read them. They submitted that the Rules and Regulations say that there can be no commercial enterprise without prior written approval, but that the Rules do not say from whom.

The Tenants stated that they have commercial insurance, and that they provided a copy to the Landlords on October 3, 2016.

The Tenants submit that the Landlords are trying to get rid of them so that the Landlords can “renovict” them.

The Landlords gave the following reply:

The Landlords acknowledged that the Tenants gave them samples of their product, but denied knowing that it was made on the rental property. The Landlords submitted that they thought produce was stored in the shed but that the product was made elsewhere.

The Landlords denied that they tried to circumvent the park Rules by drawing up the rent to own agreement. They stated that their previous tenants had tenancy agreements and that they were advised they might get a better quality of tenant, and less damage, if the next tenant was interested in purchasing the manufactured home.

Analysis

When a tenant seeks to cancel a notice to end the tenancy, the onus is on the landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the notice.

I find that the Notice to End Tenancy for Landlord’s Use is not a valid notice to end the tenancy. The Landlords stated that they had no intent to move into the rental unit and only vague plans for their son to move in. Therefore, the 2 Month Notice to End Tenancy for Landlord’s Use is cancelled.

It is important to note that there are many clauses in the “Rent to Own Contract or Lease agreement” which do not comply with the Act. Section 5 of the Act provides that parties may not contract outside of the Act and that any attempt to do so is of no force or effect. For example, the agreement provides for a late fee of \$50.00 if rent is late by more than two days. The regulations allows for late fees of \$25.00 only. Contrary to several Sections of the Act, the agreement also provides that “if Renter fails to make a

payment within 5 days of its due date, Renter agrees that Owner shall have the right to enter Renter's property for the purpose of taking possession of the rented property."

However, there are some clauses in the agreement that do comply with the Act and which the parties agreed to. I find that those compliant clauses may be enforced. One of the compliant clauses is, "The tenant shall use the residential premises for residential purposes only and will not carry on, or permit to be carried on in the residential premises, any trade or business without the written consent of the landlord."

On the One Month Notice to End Tenancy, the Landlords provided the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I find that the Tenants ran a business out of the rental property and therefore has breached a material term of the tenancy agreement. I find that the Tenants were given written notice twice to stop running their business out of the rental premises, and that they failed to do so.

Therefore, I find that the One Month Notice to End Tenancy is a valid notice to end the tenancy and the Tenants' application to cancel it is dismissed.

Further to the provisions of Section 47 of the Act, I find that the tenancy ends on November 14, 2016; however, the Landlords sought an Order of Possession to be effective November 15, 2016.

Section 55(1) of the Act provides:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the One Month Notice to End Tenancy complies with Section 52 of the Act, and therefore, pursuant to Section 55(1) of the Act, the Landlords are hereby provided with an Order of Possession.

Conclusion

The Tenants' Application is **dismissed**.

The Landlords are hereby provided with an Order of Possession effective **1:00 p.m., November 15, 2016**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 03, 2016

Residential Tenancy Branch