DECISION

Dispute Codes CNR, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 39; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 65.

Tenant J.M., the landlord's agents W.P. and K.T. and the manager of the subject rental park attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed their email addresses for service of this decision.

Tenant J.M. testified that the landlord was served with this application for dispute resolution and evidence via registered mail on June 21, 2021. The tenant entered into evidence a Canada Post registered mail receipt stating same. Agent W.P. testified that the above documents were received by the landlord but he could not recall on what date. I find that the tenant's application for dispute resolution and evidence package were deemed served on the landlord on June 26, 2021, five days after their mailing, in accordance with sections 81, 82 and 83 of the *Act.*

Agent W.P. testified that the landlord's evidence was served on the tenant in person and via registered mail 14 days ago. Tenant J.M. testified that the evidence that was served in person 14 days ago was missing evidence. Tenant J.M. testified that the missing evidence was in the registered mail package that she received on September 21, 2021. Tenant J.M. testified that the evidence was received less than 14 days before this hearing, contrary to the rules.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure (the "*Rules"*) states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. I accept tenant J.M.'s

testimony that she received all of the landlord's evidence via registered mail on September 21, 2021, which is nine clear days before this hearing. I find that the tenant received the landlord's evidence via registered mail on September 21, 2021 in accordance with section 88 of the *Act* and section 3.15 of the *Rules.*

Preliminary Issue- Is this dispute linked substantially to a matter that is before the Supreme Court?

Both parties agree that they were previously involved in two arbitrations with the Residential Tenancy Branch. The file numbers for the previous applications are recorded on the cover page of this decision. The previous decisions dated February 3, 2020 and May 21, 2020 were entered into evidence.

The February 3, 2020 decision resulted from a 12-party joiner application in which the tenants were one of the 12 parties. In the February 3, 2020 decision the arbitrator found that:

- The Manufactured Home Park Tenancy Act has jurisdiction to hear disputes between the parties.
- The landlord is bound by the Manufactured Home Site Tenancy Agreements entered into by "I.B. RV Park Inc." with a start date of January 1, 2009.
- The landlord's "Termination of License to Occupy" is invalid because the Manufactured Home Park Tenancy Act applies, and the tenants do no have licenses to occupy.
- The landlord is not permitted to charge the tenants a daily vacation charge of $55.00 per day and the rent due is as stated in the tenancy agreements.

The tenancy agreement entered into evidence for this application for dispute resolution states that the landlord is "I.B. RV Park Inc." and the tenancy has a start date of January 1, 2009. The tenancy agreement states that this tenancy is a seasonal tenancy.

In the February 3, 2020 decision the lead tenant, who is not one of the tenants in this application, testified that when he moved into the park, he understood he was renting in a MHP [Manufactured Home Park] site on an annual basis with personal use of the park from April to October. In the winter he had access to his unit, but it would be winterized and was not for long term stays.

In the February 3, 2020 decision the landlord says the term is seasonal occupancy from April to October with winter storage and therefore the tenants do not have exclusive use of the sites in the winter months. The lead tenant testified that he has had exclusive access to the site during winter months. The arbitrator found:

> Given that the Applicant and the Respondent agree their sites are rented for six months and arguable for 12 months a year as the Applicants' units and belongings are on the site 12 months of the year, which in my mind indicates the Applicants have exclusive use of the property for 12 months per year. I find the first criteria from policy guideline #27 indicates a tenancy is in place.

In the May 21, 2020 decision, the tenants sought an Order for the landlord to comply with the *Act* and to provide services and facilities required by law. The landlord served the tenants with a Notice Terminating or Restricting a Service or Facility ("NTRSF") which required the tenants to remove their rental home from the site for six months of the year. In the hearing the tenants argued that it was unreasonable and unconscionable to ask the tenants to leave their home after 25 years of residing there.

In the May 21, 2020 decision, the arbitrator dismissed the tenants' applications for an Order for the landlord to comply with the *Act* and to provide services and facilities required by law. The May 21, 2020 decision states:

> I find that the tenants failed to provide sufficient documentary or testimonial evidence to support these claims. I find that the tenants did not adequately provide specific details or particulars of their claims.
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> I find that the tenants simply claimed that it was unreasonable or unconscionable for them to move their rental home. I find that the tenants failed to show why they wanted the NTRSF set aside
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> I find that the tenants did not indicate how any services or facilities were "material" or "essential" to their tenancy as noted on page 2 of the standard RTB NTRSF form provided by the tenants and as required by section 21 of the Act, as noted above.

Both parties agree that the tenants' have filed an application for Judicial Review of the May 21, 2020 decision and that this Judicial Review is scheduled to be heard next week.

The written submissions of both parties confirm that after the May 21, 2020 hearing the tenants did not move their manufactured home from the subject rental property over the winter, contrary to the Notice Terminating or Restricting a Service or Facility.

The landlord's written submissions state:

> As a direct consequence of the refusal by the Applicants to surrender possession of the site, the site remained unavailable for winter rental by the Landlord. The Landlord invoiced the Applicants monthly based on the overnight rental rate charged to occupants who arrive on a short term basis. The overnight rental rate is $55 per night.

The $55.00 per day fee was not paid by the tenants, and so the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"). The 10 Day Notice was entered into evidence and is dated May 31, 2021. The 10 Day Notice states the tenants failed to pay rent in the amount of $12,711.35 due on May 1, 2021. The 10 Day Notice states that the tenants must vacate the subject rental site by June 11, 2021.

Section 51(2)(c) of the *Act* states:

> (2) Except as provided in subsection (4) (a), the director must not determine a dispute if the dispute is linked substantially to a matter that is before the Supreme Court.

Agent W.P. made the following written submissions which were presented in the hearing:

> Simply filing for judicial review does not stay a final and binding RTB decision. Attached hereto as EXHIBIT 3 is a description of the rules and procedures which require the petitioner in a judicial review to seek an interim order from the court to delay the result of an RTB decision. The Applicants, despite engaging expert legal advice, did not seek or obtain an interim order from the court.
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> Para 10 of the Judicial Review and Procedure Act (RSBC 1998) Chapter 241:
>
> ***Interim Order***

> *10 On application for judicial review, the court may make an interim order it considers appropriate until the final determination of the application*
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> Thus, absent an interim order, the Applicants must comply with the May 21, 2020 decision. The Applicants refusal to abide by the decision or seek an interim order permits the Landlord to proceed with an Order of Possession and payment of compensation.

The tenants have filed for Judicial Review of the May 21, 2020 decision and this review is scheduled to be heard next week. As stated in the landlord's written submissions, the landlord started charging the tenants $55.00 per day for winter months after the Notice Terminating or Restricting a Service or Facility was upheld because the tenants did not leave which prevented the landlord from renting the site to others. A change to the outcome of the May 21, 2020 decision may change the landlord's authority to charge additional rent for the winter months because if the Notice Terminating or Restricting a Service or Facility is struck down, and the tenants are permitted to keep their manufactured homes at the site in the winter, no additional rent would be owed by the tenants. If no additional rent is owed by the tenants, then the 10 Day Notice would be of no force and effect because it is based on the tenants' failure to pay vacation rent of $55.00 per day, not their agreed upon monthly rent of $217.61.

Pursuant to my above findings, I find that find that this application for dispute resolution is linked substantially to a matter that is before the Supreme Court, that being the tenants' application for Judicial Review of the May 21, 2020 decision. I therefore find that pursuant to section 51(2)(c) I must not hear this application for dispute resolution.

I find that the tenants' failure to seek an interim order and the operation of section 10 of the Judicial Review and Procedure Act do not override or otherwise interfere with section 51(2)(c) of the *Act*. I find that because the current matter is substantially linked to the Judicial Review of the May 21, 2020 decision, which is to be heard next week, I must not hear 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: October 01, 2021

Residential Tenancy Branch