Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, OLC, MNDCT, RR, PSF, OT, DRI, CNR, LRE, ERP

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenant under the *Manufactured Home Park Tenancy Act* (the Act) on February 17, 2022, seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice #1) dated May 14, 2022
- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice #2) dated May 15, 2022;
- and
- Recovery of the filing fee.

This hearing also dealt with two Amendment to an Application for Dispute Resolution. The first Amendment to an Application for Dispute Resolution (Amendment #1) was filed by the Tenant on July 3, 2022, seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice), dated July 3, 2022;
- Cancellation of a One Month Notice (One Month Notice #3) dated June 28, 2022;
- An order suspending or setting conditions on the Landlord's access to the site; and
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement.

The second Amendment to an Application for Dispute Resolution (Amendment #2) was filed by the Tenant on September 22, 2022, seeking:

- To increase their claim for compensation for monetary loss or other money owed to $30,000.00;
- A rent reduction in the amount of $2,200.00 for repairs, services, or facilities agreed upon but not provided;

- An order for the Landlord to make emergency repairs for health and safety reasons;
- Access to required services or facilities; and
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement.

The hearing was convened by telephone conference call at 9:30 A.M. on October 4, 2022, and was attended by the Tenant, the Landlord, and the Landlord's family member C.W. All testimony provided was affirmed. As the Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding (NODRP) and stated that they had no concerns with regards to the date or method of service, I found that they were sufficiently served with the NODRP for the purposes of the Act and the Residential Tenancy Branch Rules or Procedure (Rules of Procedure), and the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The participants were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over myself and each other and to hold their questions and responses until it was their opportunity to speak. The participants were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, a copy of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses confirmed at the hearing. The Tenant also requested a copy via regular mail.

Preliminary Matters

Preliminary Matter #1

The parties disagreed about whether the Act applies. The Landlord and their family member argued that it does not, as the Tenant lives in a “sea can” (AKA shipping container) which is not up to building codes. The Landlord and their family member stated that the Tenant is not allowed to have fires inside the unit and that it does not have electricity. The Landlord and their family member also stated that the place in which the sea can is located is the middle of the Landlords backyard, not a manufactured home site in a manufactured home park, and does not have any of the amenities you would regularly expect in a manufactured home park such as access to water, electrical, and sewer hookups and frost-free lines. They also stated that the sea can does not have skirting and that the property is not zoned to be a manufactured home park.

The Tenant disagreed with the Landlord’s characterization of their home as only a sea can, stating that they live in a shipping container that has been modified into a tiny home. The Tenant stated that their tiny home has a composting toilet and solar electrical systems with batteries, but does require periodic access to power via the electrical grid. The Tenant stated that the tiny home also has water storage for non-potable water and that they bring in their own potable water by hand. The Tenant pointed to Wiebe v Olsen, 2019 BCSC 1740, in support of their position that a manufactured home park tenancy may still be established even if the establishment of a manufactured home park would be prohibited by zoning bylaws. The Tenant also stated that they believe their tiny home meets the definition of a manufactured home under the Act as shipping containers are designed to be moved from place to place by being carried and their shipping container has been modified into a tiny home for the purpose of living accommodation.

The Act defines a manufactured home park as the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent, and common areas, are located. It defines a manufactured home site as a site in a manufactured home park, which is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home. It also defines a manufactured home as a structure, other than afloat home, whether or not ordinarily equipped with wheels, that is designed, constructed, or manufactured to be moved from one place to

another by being towed or carried, and used or intended to be used as living accommodation.

Based on the testimony of the parties at the hearing, I am satisfied on a balance of probabilities that the shipping container refer to by the Landlord as a “sea can” and referred to by the Tenant as a “tiny home”, was brought onto the property by the Tenant with the Landlord's consent, for the purpose of being used as living accommodation for the Tenant. I am also satisfied by the Tenant's testimony, and the fact that the parties agree the tenancy agreement was entered into allowing the Tenant to reside in the shipping container on the Landlord’s property, that the shipping container has been modified for the purposes of being used for living accommodation, as the Tenant testified that it contains a composting toilet, a solar electrical system with batteries, and water storage for non potable water. I am also satisfied that the nature of shipping containers is such that they are constructed with the intention of being moved from one place to another by being carried. As a result, I find that it meets the definition of a manufactured home under the Act.

Having made this finding, I will now turn to whether the location in which the manufactured home is located is a manufactured home site in a manufactured home park. Policy guideline #9 outlines several factors that may suggest that the Act does not apply, including but not limited to:

- the property owner retains access to or control over portions of the site and retains the right to enter the site without notice;
- rent is charged at a daily or weekly rate, rather than a monthly rate and taxes paid on the rent;
- the parties have agreed that the occupier may be evicted without a reason, or may vacate without notice;
- the agreement has not been in place for very long;
- the property owner pays utilities and services like electricity and Wi-Fi; and
- there are restricted visiting hours.

Other factors listed which may distinguish a tenancy agreement from a license to occupy include but are not limited to:

- payment of a security deposit, and
- a familial or personal relationship between the parties that would suggest that occupancy is given because of generosity rather than business considerations.

Neither party suggested during the hearing that the Landlord retains access to or control over portions of the site and may enter at anytime without notice or that the Tenant may be evicted or vacate without notice. The Landlord's issuance of several notices to end tenancy on Residential Tenancy Branch (Branch) forms, also suggests to me that the later is not the case. Although the parties disagreed about the amount of rent due each month, there was agreement between them that rent is charged on a monthly basis and neither party indicated that tax was charged on the rent amount. While the parties disagreed about whether electricity and Wi-Fi were included in the cost of rent, they agreed that the tenancy had been in place since approximately October 29, 2021. There was also no evidence before me from either party that there are restricted visiting hours, that a security deposit was paid, or that there is a familial or personal relationship between the parties. As a result, I am satisfied on a balance of probabilities that the Tenant has a tenancy agreement with the Landlord, rather than a license to occupy, which allows them to rent a particular area of the Landlord's property, henceforth referred to as the site, upon which to place their manufactured home.

The Landlord and their family member argued that the Landlord's property was not zoned for a manufactured home park and therefore a tenancy to which the Act applies could not have been establish. I disagree. Policy Guideline #9 states that while municipal zoning may inform the nature of the legal relationship between an owner and occupier, it is the actual use and nature of the agreement between the owner and occupier that determines whether there is a tenancy agreement or licence to occupy. It also states that the fact that a landlord is not in compliance with local bylaws does not invalidate a tenancy agreement and that an arbitrator may find that a tenancy agreement exists under the Act, even if the property the site is on is not zoned for use as a manufactured home park. *Powell v. British Columbia (Residential Tenancy Branch)*, 2016 BCSC 1835 and *Wiebe v Olsen*, 2019 BCSC 1740, are both referenced as part of the Policy Guideline.

Regardless of whether the Landlord's property is zoned to be a Manufactured Home Park, I find that a tenancy agreement under the Act was nevertheless established between the parties when the Landlord entered into a verbal tenancy agreement with the Tenant permitting them to bring their manufactured home onto the Landlord's property, and to occupy the manufactured home as their primary residence, in exchange for a fixed monthly amount of compensation (monetary or otherwise). As a result, I find that the Act applies and that I therefore have jurisdiction to hear and decide the Tenant's claims.

Preliminary Matter #3

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the Act.

Preliminary Matter #4

In their Application the Tenant sought remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The Landlord also denied receipt of Amendment #2 wherein the Tenant sought As the Tenant applied to cancel a10 Day Notice and three separate One Month Notice's, I find that the priority claims relate to whether the tenancy will continue or end. As the other claims are not sufficiently related to the notices to end tenancy, I exercise my discretion to dismiss all remaining claims by the Tenant, except for recovery of the filing fee, with leave to reapply.

Preliminary Matter #5

There was insufficient time to consider all four notices to end tenancy and service of all of the very voluminous documentary evidence before me during the scheduled time for the hearing, despite the fact that I extended the hearing by 44 minutes. As a result, I only accepted testimony from the parties regarding the 10 Day Notice and the payment of rent. I advised the parties that if I was unable to resolve the issue of possession with only the evidence and testimony accepted for consideration at this hearing, I would reconvene the hearing on a future date to hear further testimony and to deal with service of the majority of the documentary evidence before me. As I was able to decide the matter of possession based on the evidence and testimony of the parties in relation to the 10 Day Notice and the payment of rent, I have not ordered that the hearing be reconvened.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the 10 Day Notice?

If not, is the Landlord entitled to an order of possession under section 48?

Is the Landlord entitled to unpaid rent pursuant to section 48(1.1)?

Background and Evidence

Although the parties were in disagreement about several terms of the verbal tenancy agreement entered into, they agreed that the Tenant's occupancy of their manufactured home on the Landlords property began on approximately October 29, 2021. While the parties agreed that rent for the site on which the manufactured home was located was due on the first day of each month, they did not agree on the amount, what amenities, if any, were included, and how rent was to be paid.

The Landlord stated that rent in the amount of $500.00 was due on the first day of each month, and that the Tenant was entitled to work off up to $150.00 of this amount each month by doing work around the property. The Landlord and their family member stated that although the Tenant had been paying $350.00 in rent and doing the equivalent of $150.00 in work around the property for quite some time, when the Tenant stopped completing work, they were expected to pay the full amount of $500.00, not just $350.00, as they had recently been doing. The Tenant agreed that they were entitled to complete up to $150.00 of work on the property each month, in addition to paying $350.00 in rent as part of the tenancy agreement, but argued that even if they did not complete this work, the Landlord was only ever entitled to cash rent payments in the amount of $350.00 per month. As a result, the Tenant stated that the Landlord was not entitled to collect the additional $150.00 from them each month if they did not do work on the property.

The Landlord stated that when the Tenant did not pay the $500.00 in rent owed on July 1, 2022, the 10 Day Notice was personally served on the Tenant on July 3, 2022. Although the Tenant stated that the notice was posted to their door, not served in person, they acknowledged receiving it on July 3, 2022. The 10 Day Notice in the documentary evidence before me is on a 2021 version of the form, is signed and dated July 3, 2022, and states that $500.00 in rent was due on July 1, 2022.

The Tenant acknowledged that they did not pay any rent on July 1, 2022. The Tenant stated that they were owed $250.00 in rent credit by the Landlord; $100.00 for May of 2022 and $150.00 for June of 2022, as they argued that they had overpaid rent. As a result, the Tenant stated that they only owed the Landlord $100.00 in rent for July of 2022. Regardless, the Tenant stated that they paid the Landlord $250.00 in rent anyways on July 15, 2022.

The Landlord denied that the Tenant was owed a rent credit and stated that the Tenant had not worked off the additional $150.00 owed per month since May of 2022. The Landlord stated that the Tenant owed $500.00 in rent on July 1, 2022, and although the Landlord acknowledged receipt of $250.00 from the Tenant, they stated that this was not received until September 12, 2022. I advised the parties of the reasons permitted under the Act for a tenant to lawfully withhold rent, and the Tenant acknowledged that none applied. The Tenant also acknowledged that in their own opinion they owed at least $100.00 in outstanding rent at the time the 10 Day Notice was served and agreed that they did not pay this amount within five days of having received the 10 Day Notice.

Analysis

As set out under Preliminary Matter #1, I am satisfied that a tenancy to which the Act applies exists between the parties. I am also satisfied that a verbal tenancy agreement exists under which rent in the amount of $500.00 is due on or before the first day of each month, and that the Tenant has the ability to work off up to $150.00 worth of this rent around the property each month. Although the Tenant argued that under the verbal tenancy agreement, the Landlord would only ever have been entitled to seek $350.00 in cash per month in rent, even if they did not complete $150.00 worth of labour around the property as agreed upon, this argument does not accord with common sense. There would be little to no benefit to the Landlord in agreeing to such and arrangement and there would be no incentive for the Tenant to complete up to $150.00 worth of work on the property, which the parties agreed the Tenant did. It makes no sense to me why the tenancy agreement would include a clause that the Tenant could complete up to $150.00 of work each month in lieu of paying a debt that was never owed to the Landlord in the first place, as the Tenant argued that the Landlord could only ever seek $350.00 in cash from them for rent, regardless of whether they completed work on the property or not.

Essentially the Tenant was arguing that for no particular reason, they could choose to do $150.00 of work around the property for no value or compensation under the tenancy

agreement, which is illogical to me and not at all in line with the agreed upon fact that the Tenant was, until relatively recently, completing work on the property each month with a monetary value of $150.00, while receiving no monetary compensation or other renumeration, in addition to paying $350.00 in rent. As a result, I have preferred the Landlord's affirmed testimony that rent in the amount of $500.00 is due each month and that the Tenant is entitled to work off up to $150.00 of this rent amount each month, should they wish to do so.

I will now turn to the matter of service of the 10 Day Notice. Although the Landlord stated the 10 Day Notice was personally served on the Tenant on July 3, 2022, the Tenant stated that it was actually attached to their door and that they received it at 7:30 P.M. on July 3, 2022. Regardless of the manner in which it was received, I find that the Tenant was served with the 10 Day Notice on July 3, 2022. As a result, I find that the Tenant disputed the 10 Day Notice withing the 5-day time period set out under section 39(4) of the Act, when they filed Amendment #1 with the Branch on July 8, 2022, seeking to add cancellation of the 10 Day Notice to their already existing claims.

Section 39 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Although the parties disagreed about how much outstanding rent was owed at the time the 10 Day Notice was served, the Tenant acknowledged at the hearing that they owed at least $100.00 in outstanding rent at the time the 10 Day Notice was served and agreed that they did not pay this amount within five days after receiving the 10 Day Notice.

Although the Tenant disputed the 10 Day Notice in time, they acknowledged owing rent at the time the 10 Day Notice was served and failing to pay that rent within the timeline provided for under section 39(4)(a) of the Act. They also acknowledged at the hearing that none of the reasons allowable under the Act for withholding rent apply. As a result, I therefore dismiss the Tenant's Application seeking cancellation of the 10 Day Notice, without leave to reapply.

As I have already ended the tenancy as a result of the 10 Day Notice, I have not made any findings of fact in relation to the One Month Notices to end tenancy before me. As the Tenant's Application seeking cancellation of the 10 Day Notice was dismissed, and the remaining non-possession related claims by the Tenant have been dismissed with leave to reapply, I decline to grant the Tenant recovery of the filing fee.

As the parties agreed that the 10 Day Notice in the documentary evidence before me is correct, the effective date of the 10 Day Notice has passed, and I am satisfied that the 10 Day Notice complies with section 45 of the Act, I therefore grant the Landlord an Order of Possession for the site effective two days after service on the Tenant, pursuant to sections 48(1) and 61(2)(a) of the Act.

Given the lack of clarity by the parties regarding the amount of rent outstanding and the inability for me to confirm service of the large volume of documentary evidence before me, I find I cannot determine the exact amount of rent currently outstanding. As a result, I declined to grant the Landlord any amount for outstanding rent pursuant to section 48(1.1) of the Act. The Landlord remains at liberty to file their own claim against the Tenant with the Branch seeking recovery of any outstanding rent, should they wish to do so.

Conclusion

The Tenant's Application seeking cancellation of the 10 Day Notice is dismissed without leave to reapply and pursuant to sections 48(1) and 61(2)(a) of the Act, I grant an Order of Possession to the Landlord effective **Two Days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, 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 *Manufactured Home Park Tenancy Act*.

Dated: October 14, 2022

Residential Tenancy Branch