Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding #151 CATHEDRAL VENTURES DBA SUMMERLAND BEACH RV and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Manufactured Home Park Tenancy Act (Act). The tenants applied for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice/10 Day Notice) issued by the landlord and to recover the cost of the filing fee.

The tenants (JW, LS), the landlord/president (landlord/WP), and the landlord's agent/park manager (agent/RD) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I have reviewed the extensive oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

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

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support the Notice or should it be cancelled?

Background and Evidence

The evidence shows an extensive history of dispute resolution proceedings between the parties. Additionally, there have been two judicial reviews in the Supreme Court, according to tenant JM. The tenants' listed 8 prior dispute file numbers. Although two past disputes between the parties have been listed on the cover page of this Decision, I have not referenced all past disputes.

JM testified that they have been tenants since 1993, and on January 1, 2009, they signed their first written tenancy agreement. Filed in evidence was the signed and dated tenancy agreement (2009 agreement). The tenancy agreement was with the landlord at the time. The rent was $2285 per year, payable on the first day of the year. At the time, power to the tenants' home was not metered and the tenants paid a flat annual rate of $250, plus GST. The site was for seasonal occupancy from April to October each year. However, the tenants' home stays on the site year round. Currently, the tenants pay for their own power, as the individual sites now have power meters.

The tenants said that they pay their rent on an annual basis each year, on or before January 1. The rent has always been accepted.

Notice to end the tenancy –

Pursuant to Rule 6.6 and 7.18, the landlord proceeded first in the hearing to support the Notice.

The landlord testified that they, along with another company, KF, purchased the property in November 2005, from the original landlord, and the two companies had a 50%-50% partnership until 2018, when the landlord bought out the other company KF. KF controlled the accounting portion of the partnership during the time of their partnership.

The Notice, filed in evidence, was dated May 6, 2022 and listed an effective move-out date of May 20, 2022. The landlord listed unpaid rent in the amount of $22,985.94, owed as of May 1, 2022, and unpaid utility charges of $2.52 owed as of May 1, 2022.

The landlord testified to the following: In April 2022, the agent, RD, discovered a newer written tenancy agreement in the tenants' office file. The newer written tenancy agreement was made between the landlord's agents at the time and the tenants, showing a tenancy start date of May 1, 2012, for a monthly rent of $425, and electricity of $250 per year, until such time as a meter is installed (2012 agreement). This written tenancy agreement was previously unknown to the landlord until April 2022. When discovered, the landlord determined that the tenants owed unpaid rent accumulated since that time, or 10 years. This amount was reflected in the amount listed on the Notice.

The landlord submitted that the individual sites are now metered and each tenant is billed individually for their usage.

Within the landlord's affidavit, filed in evidence, were the following passages:

> 19. The Landlord was advised by its manager in the middle of April 2022 that upon review of the Applicants voluminous file(s) she discovered the Existing Lease. Following such advice I undertook a detailed investigation of the Landlords' records to determine the validity of the Existing Lease. As a consequence of the numerous disputes concerning the [redacted] Sub-lease, this new information was of concern to ensure I understood what had happened.
>
> 20. I attended at the office in the RV Park on August 10, ~~2010.~~ 2022 I confirmed with the manager, [redacted], the individual tenants' files (including the Applicants) are maintained in a locked secure room to which no one except the manager has access, including myself. I undertook a detailed review of the voluminous Applicants file(s) in the presence of the manager.

[Reproduced as written except for anonymizing personal information to protect privacy]

Other evidence from the landlord, including much of the affidavit, included other affidavits and records, which appeared to be related to past disputes and re-arguments.

Tenant's response –

The tenant denied owing the rent listed on the Notice.

The tenants have provided a written statement of their response, as below:

WHY AM I DISPUTING THIS NOTICE.
*I have been a tenant for many years. I have a valid and subsisting tenancy agreement dated January 1, 2009 which has been recognized by RTB. A final and binding decision was sought by the landlord and that decision held that the 2009 tenancy agreement was valid. This was RTB file #******17 (Copy uploaded).*

*As described by Justice Coval at paragraph #28 of the most recent decision by the BC Supreme Court, the landlord has been on a campaign against the seasonal tenants for many years. (Copy uploaded). Paragraphs #33 - #41 of the same decision reaffirm the decision of the arbitrator in RTB File #*****17.*

The landlord is now attempting to rely on a May 2012 tenancy agreement which he alleges he just discovered he had in his possession. The tenancy agreement (a copy of which has been uploaded) clearly states that there is an addendum with another 24 clauses that form part of the agreement. Those are the rules and regulations. The landlord does not have a signed copy of those because they were returned to me by Registered mail on May 9, 2012. I still have the original in my possession. A letter was enclosed with the Registered Mail rejecting our tenancy agreement on the grounds we had made changes to the Agreement and we had crossed off several of the rules and regulations. (Copies of the envelope and the letter are uploaded). On May 11, 2012 we received a very aggressive phone call from the manager (***) demanding to know why we had left town without returning the signed rules. We replied that we were not going to sign them as presented and that was the end of the call. I do have phone records to show his call but haven't uploaded them.

Leaving aside the illegality of this May 2012 tenancy agreement, simple contract analysis dictates that there is no contract. As tenants we interlineated portions of the rules and regulations and added clauses to the tenancy agreement regarding electricity. The landlord rejected these entirely. This was a counteroffer presented by us as tenants that was rejected. A rejected counteroffer means that there is no contract.

No further mention was made of this matter and on Dec 31, 2012 I did a reconciliation of rent owing (including an allowable rent increase although I had not received a notice of rent increase). I paid my rent at the office. (Copy of cheques and bank statement showing it was cashed are uploaded). In fact the first Notice of Rent increase that I received was dated

January 25, 2018 and clearly shows my tenancy agreement date of January 1, 2009 and my rent of $204.14 prior to the increase. (Copy is uploaded)

The landlord did not provide me with a rent or power invoice for the months December 2021 to April 2022. Then on April 27, 2022 I was presented with an invoice showing overdue rent of $25,933.71. (Copy has been uploaded)

The landlord does state in an email to (tenants' legal counsel) in May 2022 that he was not running the operations of the RV Park at that time and therefore he would not have personal knowledge of what transpired. (Copy has been uploaded). However, it would appear that the landlord has been deliberately untruthful that this new document was just discovered. The rejection of the counteroffer was apparently made at (landlord's) explicit direction (see letter) yet he denies knowledge about the very document he rejected.

[Reproduced as written except for anonymizing personal information to protect privacy]

A previous Decision referred to on the cover page and in this Decision, File ******971, is reproduced, in part, as follows:

Both parties agreed to the following facts. Monthly rent in the amount of $217.61 is payable on the first day of each month. No security deposit was paid by the tenants. The tenants reside in the manufactured home ("rental home"), which they own, and rent the manufactured home site ("site") from the landlords.

The landlord said that the tenancy began on January 1, 2009, as per the written tenancy agreement, while the tenants' agent said that it began in 1994.

[Reproduced as written]

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

While I have reviewed the extensive evidence submitted prior to the hearing and the oral evidence following a lengthy hearing, I refer to only the relevant evidence regarding the facts and issues in determining this Decision.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based.

Under section 20 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so.

Pursuant to section 39(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice, within five (5) days. However, in this case, I must determine whether the tenants owed the outstanding rent and utilities listed.

In this case, the landlord relies on what they claim is a newly discovered written tenancy agreement, dated May 1, 2012, located within their office files on these tenants, which showed a monthly rent of $425. The landlord then calculated what the rent would have been for the previous 10 years based on the 2012 tenancy agreement, not the 2009 tenancy agreement, deducted the amount of annual rent paid by the tenants, and placed the 10-year rent deficiency on the 10 Day Notice.

First of all, in deciding the merits of the Notice, the landlord, WP, testified that the 2012 written tenancy agreement was discovered by RD in April 202***2*** when looking through the office files. The landlord's own affidavit reflects this date. However, the affidavit itself was signed by the landlord and "SWORN/AFFIRMED" by the landlord's solicitor on August 17, 202***1***.

I find this inconsistency casts doubts about the credibility of all the landlord's evidence.

Apart from that, I find the facts of events contained in the affidavit consisted of re-arguments and disagreements with the outcomes of past disputes. One alleging that the tenants withheld the existence of the 2012 written tenancy agreement, when the evidence shows the landlord did not disclose this agreement that was in their office file and within the landlord's control since 2012. Apart from that, the landlord's own affidavit reflects they knew of the existence at least by August 17, 2021, the date the affidavit was sworn/affirmed.

The timing of the landlord's latest attempt to evict the tenants occurred some 5-6 months after the latest Supreme Court decision, which went in favour of the tenants. In essence, in the oral reasons for judgment of October 12, 2021, the Supreme Court reaffirmed that the Act applied to this tenancy and that the tenants would be able to leave their manufactured home to remain on site for the entire year.

In this case, I find the legal principle of 'estoppel' applies to this application for the following reasons.

Estoppel is a rule of law that states when one party, the landlord here, by act or words, gives the other party, the tenants here, reason to believe that a certain set of facts upon which the other party takes action, the first party (landlord) cannot later, to their benefit, deny those facts or say that their earlier act was improper. The rationale behind estoppel is to prevent injustice owing to inconsistency.

In effect, estoppel is a form of waiver, when one party does not enforce their rights and the other party relies on this waiver. Although the landlord claims they only discovered the written tenancy agreement, I find the written tenancy agreement was within the landlord's control since 2012, as it was in their own office file. If the landlord did not discover the 2012 tenancy agreement until April 2022, I find it was through the landlord's lack of due diligence that the document was not discovered for 10 years, if that was the case, and the landlord did nothing for 10 years to address this issue. This was despite being in dispute resolution numerous times since that date and the landlord's own evidence is inconsistent as to when the tenancy agreement was discovered.

The landlord argued that their former full partner controlled the accounting side of the business to assert that is why they did not discover the 2012 tenancy agreement until 2022. I do not find this argument reasonable, as the landlord would, or should, have full access to all business records of the joint company. Further, even if the landlord's former partner had control of the accounting side of the business, they were a landlord and would have had to know or should have known if there was a deficiency in the rent and they failed to take action.

Further, the evidence is that the annual rent listed on the 2009 tenancy agreement continued and the landlord continued to accept the annual rent, through 2022, without ever seeking to enforce the 2012 tenancy agreement, until May 2022. I find the actions of the landlord attempting to enforce a tenancy agreement 10 years after it was said to

have been signed unreasonable. The landlord ought to have filed a 10 Day Notice in 2013, the first year of annual payment due after the tenancy agreement in May 2012, and they did not. I find the tenants had the right to rely upon the landlord's actions that they were relying upon the 2009 tenancy agreement as this was agreed upon in multiple hearings. This was also confirmed in a Decision dated February 3, 2020 by the arbitrator.

For these reasons, I find the landlord was estopped from seeking enforcement of the the 2012 tenancy agreement. Therefore, I find the landlord has failed to prove the tenants failed to pay rent.

I also find the landlord submitted insufficient evidence to show that the tenants owed the amount of $2.52 in unpaid utility charges. The 2009 written tenancy agreement provided only for a flat rate.

On this basis, I **cancel** the 10 Day Notice dated May 6, 2022. The 10 Day Notice is of no force or effect. I **order** the tenancy to continue until it may otherwise end under the Act.

Further, to provide clarity to the parties going forward, I find the 2009 tenancy agreement applies to this tenancy, and that the 2012 tenancy agreement is not binding on these parties.

As I have cancelled the 10 Day Notice of May 6, 2022, I grant the tenants' application, which includes their request for recovery of the filing fee of $100.

I grant the tenants a one-time rent reduction in the amount of $100. When the tenants choose to deduct this amount, they should inform the landlord so that the landlord may not serve the tenants a 10 Day Notice for unpaid rent in that amount.

Conclusion

The tenants' application was granted as I have cancelled the 10 Day Notice.

I order the tenancy to continue until it may legally end under the Act.

The tenants are granted a one-time rent reduction of $100.

Findings and orders have been issued to the parties.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 2, 2023

Residential Tenancy Branch