Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

The Applicants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The Applicants ask me for the following orders against the Respondents.

1. Cancellation of a 10-day Notice to End Tenancy for Unpaid Rent, issued on or about 3 April.
2. Compliance with either the *Manufactured Home Park Tenancy Act* [the 'Act'] or the *Residential Tenancy Act* [the 'Compliance Claim'].
3. Reimbursement for the $100.00 filing fee for this application.

The Respondents appeared at the hearing on 16 May 2023. The Applicants also appeared.

Issues to be Decided

Does the Director of the RTB have jurisdiction to hear this application?

If so, then should I cancel the Notice?

And should the Respondents compensate the Applicants for the cost of filing this application?

Background and Evidence

In February, the Applicants moved their recreational vehicle [the 'RV'] onto a site on the Respondents' private property [the 'Site'] and began living there out of their RV.

The Respondents said that the Site is ‘basically a parking area’ and was where they themselves used to keep their own recreational vehicle. They never before had anyone else live there, and the parties were unknown to each other. But in this instance, the landlords decided to ‘help’ the Applicants and allow them to live on this Site in their RV, as the Site was sitting empty.

The Respondents and Applicants entered into a verbal agreement. They agreed that the Applicants would pay the Respondents $800.00 each month as rent for the Site. The Respondents also required a $400.00 damage deposit from the Applicants before moving onto the Site, which the Applicants paid in advance [the ‘Deposit’].

The Applicants requested that this agreement be made in writing, but the Respondents refused. The Applicants told me that they understood, on moving onto the Site, that this agreement was to be long-term. They had this understanding, in part, because the Respondents told them that they didn’t want people ‘coming and going’ from the Site. That is, the Applicants understood that the Respondents did not want a variety of temporary guests coming and going: instead, the Respondents wanted someone who would stay for a while.

The Applicants moved their RV onto the Site on 22 February, and then paid a further $800.00 to the Respondents. The Respondents said that this payment was for rent for March.

After moving onto the Site, the Applicants had doubts about whether the Respondents ought to have requested the Deposit. In exploring these doubts, the Applicants couldn’t determine whether the Act applied, or different legislation. Ultimately, the Applicants decided that, under the Act, the Respondents were not entitled to the Deposit. And so the Applicants withheld $400.00 (the amount of the Deposit) from the next rent payment (for April), and asserted that that Deposit ought to be credited toward rent.

When, on 1 April, the Applicants attempted to pay the Respondents $400.00 for April’s rent, the Respondents refused to accept it: they decided that the Applicants should go. And so on 3 April the Respondents issued the Notice, claiming that the Applicants had failed to pay $800.00 for April’s rent.

The Applicants refused to leave, and when May came around, paid the Respondents $800.00, which they accepted.

Analysis

Does the Director of the RTB have jurisdiction to hear this application?

The Respondents told me that their verbal agreement with the Applicants amounted to a 'licence to occupy' the Site. In support of this, the Respondents referred me to Residential Tenancy Policy Guideline 9: Tenancy Agreements and Licences to Occupy [the 'Guideline'].

In particular, the Respondents asserted the following about the agreement with the Applicants:

1. the parties could break it at any time;
2. it had not been in place for very long;
3. the Respondents paid for utilities and services to the Site; and
4. the Respondents rented the Site to the Applicants out of generosity, rather than business considerations.

For their part, the Applicants emphasised that the agreement was intended to be a long-term agreement, and that this intention provoked them to seek an agreement in writing (which the Respondents refused). The Applicants conceded that they did not know what a 'licence to occupy' is.

The Respondents argued that, because all the Applicants have is a licence to occupy, the Director of the RTB does not have jurisdiction to resolve this dispute.

I have considered all the evidence proffered by the parties (but, in terms of documentary evidence, I have only considered the Notice: I did not accept into evidence any of the other documents that the parties submitted).

And I have considered all the arguments made by the parties, including, in particular, those portions of the Guideline that the Respondents submitted to the RTB. But I emphasize that the Guideline does not bind me: it is what it says it is, a guideline. As such, it is helpful for considering relevant issues, but no more. Of more assistance to me is a recent decision of the Supreme Court of British Columbia: *Wiebe* v *Olsen*, 2019 BCSC 1740.

Having heard from both parties, I find the following details significant:

1. the parties agreed that fixed, monthly rent would be paid;
2. this rent was not calculated on a daily basis;

3. there was no evidence or argument that the amount of that rent was somehow so remarkably low as to suggest it was a generous boon to the Applicants;
4. there was no written agreement that the Act would not apply;
5. there was no evidence of the Applicants having any other residence;
6. the Site is not in a campground or recreational-vehicle park; and
7. when the Respondents wanted the Applicants to move away, they issued an RTB notice.

These details indicate a tenancy.

While the Respondents argue that the agreement had not been in place very long, and could be ended at any time, I note that the Applicants had a different understanding, and recalled the Respondents telling them that they didn't want people coming and going from the Site. But, of real significance, the Respondents sought monthly rent, as well as the Deposit. These actions suggest a longer-term arrangement, rather than a temporary stay.

I also do not agree that the Respondents entered into the agreement out of any particular generosity: they wanted $800.00 each month from the Applicants and, as noted above, there is no evidence that this amount is somehow generously low. Taken in the overall context, this agreement is a business arrangement.

And while the agreement may have been that the Respondents would pay for utilities and services, this detail (even combined with the argument that the arrangement was a generous effort on the part of the Respondents), does not tip the balance in favour of a licence to occupy. I find it neutral in significance.

The totality of the evidence satisfies me that the parties probably intended to create a tenancy.

I do not, therefore, find that this agreement is a mere licence to occupy. Thus, in the circumstances, the Act applies, and so the Director has jurisdiction over this dispute. This ruling addresses the Compliance Claim by clarifying for the parties whether and which legislation applies to their agreement.

Should I cancel the Notice?

This leaves me with determining whether to cancel the Notice.

The Applicants (Tenants) tell me that they didn't have to pay the Deposit, and so they are entitled to deduct that amount from rent owing for April.

The Respondents (Landlords) say that because their Tenants only paid half rent for April, the tenancy is at an end.

Having decided that the Act applies, I cite section 17 of the Act. This section prohibits a landlord from requiring a security deposit from a tenant. If a landlord does require a deposit, which the tenant then pays, then the tenant can subsequently deduct the amount of that deposit from rent.

I find that what has occurred in this case agrees with section 17. The Tenants paid the Deposit to the Landlords. Then the Tenants determined that the Deposit should not have been required of them. And so they withheld the amount of the Deposit from the next month's rent. The Act empowered them to do so.

The fact that the Landlords refused to accept the outstanding $400.00 from the Tenants does not support an allegation that the Tenants failed to pay rent.

But I note that, under the terms of the tenancy agreement, the Landlords are still entitled to receive the outstanding $400.00 for April's rent.

Conclusion

I grant this application, and cancel the Notice.

As the Tenants succeeded in their application, I grant that the Landlords bear the cost of the filing fee. So, the Tenants may reduce their next rent payment by $100.00 to compensate them for this cost.

Considering that the Tenants owe the Landlords $400.00, if the Tenants increase their next rent payment by $300.00, then this would compensate them for the filing fee and satisfy the debt owed to the Landlords for April's rent.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 31 May 2023

Residential Tenancy Branch