Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Manufactured Home Park Tenancy Act ("Act") for orders as follows:

- cancellation of the landlords' One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 40
- reimbursement of the filing fee pursuant to section 65

Both parties attended the hearing. Landlord JL appeared with advocate KL. Tenant KD appeared with advocate KC. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated January 31, 2023. Pursuant to section 81 of the Act the tenant is found to have been served with this notice in accordance with the Act.

The landlord acknowledged receiving the tenant's evidence but stated they did not receive the dispute notice in respect of this matter. The tenant's advocate stated that the dispute notice was included in a package sent to the landlord by registered mail on February 8, 2023. The tenant did not provide documentation of proof of service in evidence but did provide a Canada Post tracking number through her agent during the hearing. I find based on the submissions of the tenant's advocate that the tracking

number is valid. I find the landlord was served in accordance with sections 81 and 82 of the Act.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant? Is the landlord entitled to an order of possession?
2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced September 1, 2020. Rent is $825.00 per month due on the first of the month. The tenant still occupies the rental site which is a manufactured home pad. The tenant owns the manufactured home.

The landlord stated that he issued the One Month Notice to the tenant pursuant to a government order. He stated that the Sunshine Coast Regional District ("SCRD") has issued an order to the landlord to come into compliance with zoning. The ~~trailer~~ pad that the tenant is renting is in an area not zoned for this type of use. The landlord referred to a previous decision issued by the RTB in respect of this site cancelling a One Month Notice. In that decision, the One Month Notice was cancelled as it was issued pursuant to a government order which was found not to be a government order. After that decision, the SCRD issued what the landlord believes is a valid order to come into compliance with the zoning regulations and remove the ~~trailer~~ from his property. The landlord stated that the One Month Notice and the SCRD order were provided in evidence by the tenant.

The landlord further testified that they are merely trying to bring the land into zoning compliance and have no plans to develop the property in another way.

The tenant provided written submissions and adopted those submissions in the hearing. The substance of the tenant's submissions are:

1. The "order" received by the landlord from the SCRD does not constitute a government order. It is a signed letter from the SCRD chief administrative officer ("CAO") using the phrase "I hereby order". The CAO states in his letter that the legitimacy of the order is derived from SCRD Board Directive 123/22 of May 12,

2022. The tenant takes the position that the SCRD Board of Directors did not delegate the power to issue an order to the CAO.

2. The tenant produced in evidence the May 12, 2022 meeting minutes of the SCRD and submitted that there is nothing in the meeting minutes for suggest that the SCRD made an order on that date in relation to the subject rental site. The minutes instead direct that a compliance agreement be created, which was done, and that was found previously by the RTB to not be an order within the meaning of the Act.
3. The tenant submitted that to enforce a bylaw, it must first be determined whether an infraction was committed. The Community Charter Act of BC requires that bylaw infractions be determined by the courts. Only the courts can determine a by-law infraction and make a consequent order.
4. The tenant submits that under the Local Government Act of BC, Section 229 (2) (f), the SCRD cannot delegate the power to impose a remedial action requirement under Part 3 of the Community Charter Act. The tenant argues that the SCRD is effectively delegating power to impose a remedial action on the RTB, which then creates a conflict between the SCRD and the RTB.
5. Alternatively, the tenant submits that if the order is found to be a "government order" as contemplated under the MHPTA by virtue of a bylaw infraction, enforcement of the order would contravene the tenant's rights under the MHPTA. The tenant referred to RTB Policy Guideline #9 and the decision of Wiebe V Olson (2019 BCSC 1740, both which the tenant submit stand for the proposition that there is no statutory requirement that the landlord meet zoning requirements to fall within the powers of the MHPTA. The MHPTA is a primary statute that would take precedence over municipal bylaws. The tenant asserts that zoning is not a relevant consideration regarding a tenancy.
6. The tenant additionally submits that the termination of her tenancy should be governed by Section 42 of the MHPTA, and the tenant should receive the 12 months notice required under this section in order to lawfully end the tenancy.

Analysis

RTB Rules of Procedure 6.6 states, "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. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the

tenant applies to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the One Month Notice served on the tenant.

Validity of the Government Order

The tenant asserts that the CAO of the SCRD did not have the delegated authority to issue the order and requests that I review the legislation with a view to determining whether the CAO had jurisdiction to issue the order in question.

I find that I do not have jurisdiction under the MHPTA to determine the jurisdiction of the CAO of the SCRD to issue the order. I cannot go behind the order to determine its validity. Therefore, I accept that the SCRD order is a valid government order on its face.

Zoning

The tenant has argued that zoning designation of the land is not a determining factor when considering the validity of the One Month Notice based on RTB Policy Guideline #9. More specifically, the tenant argues that zoning cannot be a factor for this proposition.

The court in *Wiebe* was reviewing an arbitrator's decision in determining whether a tenancy existed. In concluding that no tenancy existed the arbitrator reviewed some of the factors outlined in the RTB Policy Guideline #9 that provide guidance in determining whether a tenancy exists. One of the factors considered by the arbitrator was the fact that the land was not properly zoned for the use. This was only one factor that led to the arbitrator's determination that a tenancy did not exist.

In my previous decision I found that a tenancy existed in this case regardless of the land zoning. *Wiebe* stands for the proposition a tenancy can exist regardless of zoning. It does not stand for the proposition that a landlord cannot end a tenancy to comply with a government order that relates to zoning.

The tenant submitted that she should receive 12 months notice to end the tenancy based on section 42 of the Act. The landlord served the tenant with a One Month Notice which has been disputed by the tenant. I must therefore determine the validity of the One Month Notice.

I find that the landlord has established a valid reason for issuing the One Month Notice. The landlord has been issued a government order requiring them to remove the tenant and come into compliance with zoning.

The One Month Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the One Month Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenant's application. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession effective June 30, 2023 at 1:00 pm.

Conclusion

The landlord is granted an order of possession which will be effective June 30, 2023 at 1:00 pm. The order of possession must be served on the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: June 7, 2023

Residential Tenancy Branch