Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: OLC
Landlord: OPM, FFL

Introduction

The Tenant filed an Application for Dispute Resolution (the "Application") on April 24, 2023 seeking the Landlord's compliance with the legislation and/or tenancy agreement.

The Landlord filed their own Application on May 9, 2023 seeking an order of possession in line with a mutual agreement to end tenancy. They also seek reimbursement of the Application filing fee. I joined this Application for the same matter to the Tenant's Application; this single decision completes both the Landlord's and the Tenant's Applications.

The matter proceeded by way of a hearing pursuant to s. 67(2) of the *Manufactured Home Park Tenancy Act* (the "*Act*") on August 10 and August 29, 2023. In the conference call hearing, I explained the process and provided the participants the opportunity to ask questions.

Preliminary Matter –service of Notice of Dispute Resolution Proceeding and evidence

At the start of the hearing on August 10, I confirmed with the Tenant that they served the Notice of Dispute Resolution Proceeding coming from their Application to the Landlord. They stated they used registered mail for this purpose, and the Landlord confirmed they received the material.

The Landlord served evidence in response to the Tenant's Application; the Tenant in the August 10 hearing confirmed they received that material.

In the August 29 hearing, the Landlord set out that they used registered mail for the purpose of serving the Notice of Dispute Resolution Proceeding and evidence they intended to rely on for this hearing. They used the exact address that the Tenant provided on their own Notice of Dispute Resolution Proceeding, *i.e.*, the address for service of documents on page 2. Upon the item being returned to them, the Landlord delivered their package of material associated with their Application to the Tenant "in person"; however, this meant the Landlord placed the material in a mailbox at that address.

Even though the Tenant maintained they did not have notice of the Landlord's Application until the August 10 initial hearing, I find the Landlord completed service to the Tenant's own provided address for service of documents via registered mail. I find the Tenant was notified of the August 29 hearing as required.

The Landlord fulfilled the requirement as per s. 89 of serving the Notice of Dispute Resolution Proceeding for their Application. I proceed with the hearing on the confirmation from each party that they received the Notice of Dispute Resolution Proceeding and evidence from the other.

Issue(s) to be Decided

Is the Landlord obligated to comply with the *Act* and/or the tenancy agreement?

Is the Landlord entitled to an Order of Possession in line with a Mutual Agreement to End Tenancy, pursuant to s. 48 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord described the landlord-tenant relationship as being in place with some form/iteration of a tenancy agreement since 2010. The Landlord provided a copy of a tenancy agreement that started on April 1, 2018, showing the amount of $460 in rent.

The Tenant provided a copy of this same tenancy agreement. Each party indicated on their Application that the rent amount in place was $514.

The parties signed a Mutual Agreement to End Tenancy, providing that "the tenant agrees to vacate the [manufactured home site] at: 11:30am October 31, 2023."

The parties also signed a "license to occupy" on October 31, 2023, containing the following points:

- the Tenant would continue to reside in the unit as "an occupant, not a tenant"
- the "occupancy fee" was $514 monthly, not constituting the reinstatement of a tenancy agreement
- does not constitute a tenancy agreement within the meaning of the Residential Tenancy Act
- the license to occupy ends on May 1, 2023.

On their Application, the Tenant stated the issue thus:

> September 2nd 2022, my landlord issued me with a One Month to End Tenancy and I filed a dispute with the RTB in response. I was an inpatient in hospital at this time. My landlord pressured me to cancel the hearing and told me I had to sign a License to Occupy and Mutual Agreement to End Tenancy. I believe this was an attempt for him to Contract out of the MHPTA and remove my rights as a tenant. I would like him to acknowledge my ongoing tenancy as per the signed agreement.

The Landlord previously served a One-Month Notice to End Tenancy for cause to the Tenant. The Tenant completed an application to dispute that prior end-of-tenancy notice. They submit the Landlord pressured them to sign a Mutual Agreement to End Tenancy, and another document that sets out specific conditions in place, known as the "License to Occupy". In their Application, the Tenant seeks a cancellation of these two documents that purportedly end the tenancy on a specific date. They claim the Landlord utilized this tactic, forcing the Tenant to withdraw the previous hearing concerning the One-Month Notice.

More specifically, the Tenant presented that they were in the hospital when the Landlord presented these documents to the Tenant for their signature. The Landlord left these documents with the Tenant and returned one day later to retrieve them as signed. The Tenant described not knowing what these documents were or what was in them in detail – they wanted another fixed-term tenancy agreement, as had been in place for several

times before in this tenancy. The Tenant stated that this process, as initiated by the Landlord, was “very rushed.” After signing this document, they sought legal assistance.

In their written description, the Tenant set out the issue:

> My landlord presented me with a document and told me I had to sign it in order to stay in my home, and then he quickly presented another and told me I had to sign. This was the Mutual Agreement to End Tenancy and I was unsure of what this document was. He told me I had to sign it in order to stay and also told me I had to contact the RTB and cancel the arbitration. He made me feel like I had no choice but to sign. I have never had any intention to leave my home or agree to sell it or move away. My hope is to remain in my home for the foreseeable future.

The Tenant also notes that after they signed, they “sought help to try and understand the documents and [were] shocked and horrified when [they] realized what the documents were.”

In response to this, the Landlord stated they left the Tenant with plenty of time to consider the situation before signing the Mutual Agreement to End Tenancy, and the accompanying License to Occupy. The Landlord presented this timeline was approximately 6 weeks. The Landlord reiterated that they did not “force” the Tenant to sign this document as alleged. Moreover, they drafted the License to Occupy with the Tenant’s best interests in mind, even consulting with the Tenant on its content – upon discussion, the Landlord said they would review the content, and get back to the Tenant on specific points therein.

The Landlord maintained that they presented an option to the Tenant: hold the hearing regarding the One-Month Notice; or have an agreement in place (*i.e.*, the Mutual Agreement to End Tenancy and License to Occupy). The Landlord also maintained the Tenant had ample time to seek help, and it was not until approximately 6 months later, near the end of the License to Occupy term, that the Tenant sought out help on the issue. When the Tenant’s advocate clarified that the Tenant’s assistance began in November, the Landlord reiterated that the Tenant had assistance in this matter from early on.

The Landlord also presented that, after the signing of the Mutual Agreement was complete, they had to serve end-of-tenancy notices for unpaid rent. The Landlord was also issuing receipts for rent paid as “use and occupancy only”.

In response to the Landlord’s Application for an order of possession (heard on August 29), the Tenant provided the following documents as evidence:

- a letter from a doctor confirming the Tenant's permanent disability, touching upon the Tenant's "difficulty with small decisions which lead to [the Tenant] not doing anything which compounds small issues into bigger issues with bigger consequences"
- a second letter from a psychiatrist who attested to the Tenant's recent history.

The Tenant drew attention to the outline of their medical condition, to show that they were in the hospital from September 15 onwards, showing they were not of sound mind/body when they signed the Mutual Agreement to End Tenancy on October 31.

Analysis

I find the parties had a tenancy agreement in place for quite some time. This is, as per the definition in s. 1 of the Manufactured Home Park Tenancy Act, "an agreement, whether written or oral, express or implied, between a landlord and a tenancy respecting possession of a manufactured home site. . ."

To be clear: the 2018 agreement the parties signed is one governed by the *Manufactured Home Park Tenancy Act*, and not the *Residential Tenancy Act*. As well, the Landlord and the Tenant each indicated on their Application that the *Manufactured Home Park Tenancy Act* applies.

I make a record of this to distinguish the definition of "tenancy agreement" between the two separate pieces of legislation: while the *Residential Tenancy Act* definition of "tenancy agreement" specifically includes a license to occupy, the *Manufactured Home Park Tenancy Act* does not. I make this distinction to inform the parties that I have no authority under the *Manufactured Home Park Tenancy Act* to make a determination on any dispute regarding the license to occupy that the parties signed on October 31, 2022. The validity of that document is outside the scope of my authority for this hearing.

The *Act* s. 5 provides that it cannot be avoided:

> (1) Landlords and tenants may not avoid or contract out of this act or the regulations.
>
> (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In their Application, the Tenant stated the issue thus:

> I believe this was an attempt for [the Landlord] to Contract out of the MHPTA and remove my rights as a tenant. I would like him to acknowledge my ongoing tenancy as per the signed agreement.

I find the Tenant submits the Landlord is avoiding or contracting out of the *Act* via the imposition of the Mutual Agreement to End Tenancy.

The *Act* provides for an ending of a tenancy in s. 37:

> (1) A tenancy ends only if one or more of the following applies:
>
> (c) the landlord and tenant agree in writing to end the tenancy;

I find the *Act* allows for a tenancy to end in this manner; therefore, with respect to the Mutual Agreement to End Tenancy signed by the parties on October 31, 2022, I find the Landlord is not avoiding or contracting out of the *Act*. Additionally, there is nothing present in the existing tenancy agreement, barring or otherwise contradicting the *Act*; paragraph 27 in the tenancy agreement states: "The landlord and tenant may mutually agree in writing to end this Agreement at any time."

The Tenant has pleaded for a cancellation of this Mutual Agreement to End Tenancy based on the unfairness of the transaction, stating they were forced to sign the document. I apply a common law principle of capacity with respect to contract law to examine this issue separately, to determine whether any aspect of their signing of the document violates common law principles of fairness.

In considering this aspect of the Tenant's Application, I find as follows:

- I find the Landlord credible on their particular point that they left the matter with the Tenant for consideration for some time before the parties signed the agreement on October 31, 2022. I find this afforded the Tenant ample time to read and understand the Mutual Agreement to End Tenancy, and to seek assistance with the matter.

- The Tenant was familiar with the Residential Tenancy Branch and what the branch does in terms of resolving landlord-tenant disputes. The Tenant previously filed an Application to dispute an end-of-tenancy notice, and the parties mentioned prior disputes. I find the Tenant had the knowledge and means to contact the Residential Tenancy Branch to clarify any

misunderstanding about this particular document and what it would entail in terms of their rights and obligations as per the *Act* and this tenancy.

- The document itself is unaltered and complete. The form itself states: "Neither a Landlord nor a Tenant is under any obligation to sign this form." The form also provides: "If you have questions . . . contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign." I find the full information about how the Tenant could ascertain their rights or obligations via the Residential Tenancy Branch was available to the Tenant, with time for them to read the form in full and process it.

- There was no specific information that the Landlord did not afford the Tenant ample time to read the document in full before the parties signed it on October 31, 2022. The Tenant did not describe specific demands and/or threats from the Landlord; therefore, I find the Landlord more credible on the specific point that they left the information with the Tenant for some time for the Tenant to review the situation and this document and its meaning before signing.

- After signing, the Tenant did not seek its cancellation or otherwise raise it as an issue until nearing the end of the occupancy timeframe toward the end of April 2023 when they made their Application. That was the timing when the period of occupancy was ending. The Tenant stated they had consulted with an advocate along the way; however, they were not specific about sharing the information about the Mutual Agreement to End Tenancy with that advocate. Aside from information about the Residential Tenancy Branch being fully disclosed and within the Tenant's knowledge, I also find the Tenant had the means to consult with an advocate in this matter regarding the particulars of this Mutual Agreement to End Tenancy. I find it less likely that the Tenant was not aware of what they had signed and what it meant until April 2023, some 6 months later.

In conclusion, I find the Tenant less credible on the specific point that they did not have the capacity to understand what it was they were signing, neither at the time of signing it, nor in a near-contemporaneous timeframe shortly thereafter. I find the Tenant had the capacity to understand the document when signing it, and they are not allowed to change their mind on their rights and obligations as per the *Act* and the tenancy agreement six months after the fact that they agreed with the Landlord to end the tenancy.

For these reasons, I dismiss the Tenant's Application (*i.e.*, for the Landlord's compliance with the *Act* and/or the tenancy agreement), without leave to reapply. In summary: this was a lawful end of the tenancy.

The *Act* s. 48(2)(d) provides that a landlord may request an order of possession in the circumstances where a landlord/tenant have agreed in writing that the tenancy is ended. As per s. 48(3), an arbitrator may grant an order of possession after the date when a tenant is required to vacate a manufactured home site, and the order takes effect on the date specified in the order.

I find the Landlord and Tenant completed a Mutual Agreement to End a Tenancy on October 31, 2022 as shown in the record. The end-of-tenancy date was October 31, 2022. Based on this document that bears both parties' signature as proof of the fact that the tenancy has ended on mutual agreement, I grant an Order of Possession, as per s. 48 of the *Act*, to the Landlord.

As the Landlord was successful in their Application, I find the Landlord is entitled to recover the $100 Application filing fee.

Conclusion

I grant an Order of Possession to the Landlord effective two days after service of this Order of Possession on the Tenant. Should the Tenant fail to comply with this Order of Possession, the Landlord may file this Order of Possession with the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

Pursuant to s. 65 of the *Act*, I grant the Landlord a Monetary Order for the recovery of the filing fee paid for their Application. I provide the Landlord with this Order in the above terms, and they must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Monetary Order, the Landlord may file this Monetary Order in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 9, 2023

Residential Tenancy Branch