

Citation: *Carey v. 41750 Yukon Inc. (Benchmark Trailer Park)*, 2015 YKTC 21

Date: 20150713
Docket: 14-T0103
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Luther

IN THE MATTER OF THE *LANDLORD AND TENANT ACT*
RSY 2002, c.131 AND AMENDMENTS THERETO

BETWEEN:

MICHELLE CAREY AND DARRELL CAREY

TENANTS

AND:

41750 YUKON INC. carrying on business under
the firm and style of BENCHMARK TRAILER PARK

LANDLORD

Appearances:

Cindy Carey and Michelle Carey
Rob Twa

Appearing on behalf of the Tenants
Appearing on behalf of the Landlord

REASONS FOR JUDGMENT

[1] Under Part IV of the *Landlord and Tenant Act*, RSY 2002, c.131 (the '*Act*'), an application has been filed in the Territorial Court to invalidate the termination of the tenancy which has existed between the parties for about seven years. The Careys are the owners of a mobile home that is located at pad lot 320 in the Benchmark Trailer Park (the "Trailer Park").

[2] Section 92 of the *Act* reads as follows:

A landlord or tenant may, at any time after a notice purporting to terminate a tenancy has been given, apply to a judge for a declaratory order respecting the validity of the termination of the tenancy under this Act, and the judge may

(a) confirm the termination of the tenancy on a date specified in the order, in which case the order becomes enforceable on that date; or

(b) invalidate the termination of the tenancy.

[3] Succinctly put, the landlord acquired the Trailer Park in 2008. It has been in existence since at least the 1970s.

[4] Michelle Carey's parents have owned the 1971 mobile home at that location for a considerable period of time, and Michelle Carey herself has lived there since she was 14 years of age. The applicants, husband and wife, assumed ownership in 2004, and for the last four years they, in effect, have subletted it to Darrell Carey's sister, Cindy Carey.

[5] The landlord was concerned about the condition of the mobile home as early as 2009. Robert Twa, the Vice-President of 41750 Yukon Inc. advised that there are 38 trailer units in the Trailer Park and that only one or two are in worse condition than that of the applicants.

[6] Mr. Twa claims that there were discussions with the sub-tenant, Cindy Carey, consisting of at least two or three verbal warnings, but none in writing. From his perspective, there were no significant efforts by the applicants to improve their property. Indeed, if the applicants had given the landlord a plan, they could have gone to the City of Whitehorse and initiated the building permit process.

[7] There are no issues of late or non-payment of rent except on one occasion when the sub-tenant was out of town. This was quickly rectified and has no bearing on the outcome of this case.

[8] The tenants did have an old builder's permit from 2007 which was not acted on and consequently expired. Furthermore, the tenants acquired building materials, including trusses which no longer meet building code requirements.

[9] On the other hand, the tenants claim that their calls were very rarely returned by the landlord. Also they were frustrated because they could not get work done by contractors who refused to work there because of the sloughing hillside directly and closely behind their mobile home and the risk that damages could be caused to the Trailer Park's sewage lines and electrical poles.

[10] This concern was made abundantly clear when I conducted a judicial view on the afternoon of May 27, 2015. There was, on the hill just behind the mobile home, an electrical pole which obviously was no longer in use plus an old wooden shed which housed the water system. The sloughing was readily visible.

[11] The landlord claims that there were no requests from this particular tenant to put up a retaining wall, while they had, in fact, constructed five of them elsewhere throughout the Trailer Park.

[12] The landlord maintains that there was no talk by the applicants of the sloughing of the bank behind the dwelling until after the eviction notice was served on March 11, 2014.

[13] A major issue in this case is the lack of documentation. In this day and age of emails, there is no excuse on either side. The only other paper in addition to the notice of eviction we have is a letter dated June 20, 2014, from the landlord to the tenants.

The relevant portion of that letter reads as follows:

Unfortunately, your delay in repairing your mobile is the issue at hand. As we have stated previously, we have goals to maintain and upgrade the general [a]esthetics of the park. Due to the age and condition of your mobile home, upgrades cannot [be] made that will bring it up to an [a]esthetically pleasing standard.

...

This will be our last correspondence with you regarding this matter.

[14] The lack of proven communication is problematic for the landlord. I accept the tenants' evidence that the landlord was hard to reach.

[15] A further example of poor business practices was the non-compliance with s. 62(1) of the *Act*. Section 62 reads as follows:

62(1) If a tenancy agreement in writing is executed by a tenant after this Part comes into force, the **landlord** shall ensure that a fully executed duplicate original copy of the tenancy agreement is delivered to the tenant within 21 days after its execution and delivery by the tenant.

(2) If the copy of a tenancy agreement is not delivered in accordance with subsection (1), the obligations of the tenant thereunder cease until the copy is delivered to them.

[16] Exhibit 7 is a purported lease involving these parties covering the period from September 1, 2012 to September 1, 2013. It is neither signed by the tenants nor is it dated.

[17] I also have some concerns as to the description of the pad lot, 320. What does it include? How far up the hill behind the unit?

[18] This concern is raised because in the apparent lease, the tenant is responsible for maintaining the lot “in a neat and tidy condition” (term 8) while the landlord is responsible for “all public facilities... and areas within the park” (term 25).

[19] While the exact boundary of the leased land is unclear, I believe it is safe to say that the abandoned electrical pole, the water shed and a significant amount of the sloughing hill would not be included in pad lot 320, and thus would be the clear responsibility of the landlord.

[20] The Court takes no issue with the adequacy of the contents of the eviction notice and that it was properly served.

[21] However, the landlord chose to give a reason for the eviction. In the notice, the tenants were said to be in violation of term 7 by failing to keep the exterior of the mobile home “clean and in a good state of repair”. While the dwelling was reasonably clean, it was not in a good state of repair and looked rather shabby and rundown.

[22] Regardless of the backdrop of the aesthetic concerns of the landlord and the frustrations of the tenants in not having calls returned and being unable to get contractors to perform work in a risky situation, this case boils down to whether a proper notice was given. The landlord may terminate without cause as long as it gives the proper notice. Section 90(3) of the *Act* states:

A notice by a landlord terminating a tenancy in relation to a mobile home site shall be given to the tenant on or before the last day of one month of the tenancy to be effective on the last day of the twelfth month following the month in which the notice was given.

[23] What we don't know with certainty is the time frame of the lease governing the period of the notice, which was given on March 11, 2014. Did the lease in part run from September 1, 2013 for this relevant time frame? That uncertainty is due entirely to the sloppy business practices of the landlord.

[24] While the landlord may terminate the lease at the lawful time as set out in s. 90(3) of the *Act*, it is nigh impossible to determine that time when there is no proven written lease and no compliance with s. 62 of the *Act*.

[25] Even under the unproclaimed legislation dealing with mobile homes, the *Residential Landlord and Tenant Act*, which has passed in 2012, section 49 still authorizes a landlord to terminate a mobile home tenancy without cause with a time period of a year, subject to a tenant's right to dispute the notice.

[26] In my view, the tenant's protection in s. 49(3) of the unproclaimed legislation offers somewhat more protection than the present s. 90(3) and s. 92.

[27] Termination of a lease involving a mobile home which has been there even well before the landlord took over the Trailer Park is certainly a drastic remedy with far-reaching consequences. While I have the discretion to confirm the eviction notice, I would be loath to do so if the landlord has not followed all the lawful steps carefully and accurately.

[28] The issues which arise in the present case are:

- 1) non-compliance with s. 62 of the *Act*;
- 2) colouring the reasons for eviction when none need have been given in the first place; and
- 3) proof of the existing lease.

[29] The termination of the tenancy as sought by the landlord for March of 2015 is hereby declared invalid.

[30] Given the unequivocal and steadfast intention of the landlord to terminate this tenancy and its legal right to do so, under the circumstances of this case, it is entirely appropriate to give the tenants some degree of relief pursuant to s. 96(3) of the *Act*. The tenancy is declared terminated on or before July 31, 2016, just a little over one year from today's ruling. I am terminating the tenancy on a certain date to prevent complications with respect to notice that could arise now, given that the parties are in limbo.

[31] Persons who choose, or perhaps are forced, due to lack of financial resources, to place what is most often a depreciating asset on a pad lot in a trailer park with a yearly lease cannot assume, nor expect to stay there indefinitely. A yearly lease is just that – one year. If the tenants were able to negotiate a multi-year lease, or better yet, acquire land of their own, they would be in a far more secure position. Another option would be

the establishment and continuation of a unified tenants' association to counter the present power imbalance between landlord and tenant in a trailer park setting.

LUTHER T.C.J.