

DECISION

Dispute Codes: CNC

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act"). The tenant applied to cancel a Notice to End Tenancy for Cause.

The tenant, an advocate for the tenant, the landlord, the building manager/agent for the landlord, and a witness for the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Both parties confirmed receiving the evidence package from the other party and that they had the opportunity to review the evidence prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the 1 Month Notice To End Tenancy for Cause be cancelled?
- Is the landlord entitled to an order of possession for cause?

Background and Evidence

This tenancy began on April 1, 2005. Originally, site rent in the amount of \$249.00 was due on the first day of the month, and has been increased over the course of the tenancy to the present amount of \$312.50 per month.

The parties agreed that the agent of the landlord served the tenant in person with a 1 Month Notice to End Tenancy for Cause (the "Notice") on December 8, 2012. The effective vacancy date on the Notice is January 31, 2013.

The Notice from the landlord indicates that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The landlord testified that he believes the park rules and regulations (the "park rules") have been in effect since the tenancy started in 2005. The tenant did not dispute the landlord's testimony as to when the park rules came into existence during the hearing.

The landlord stated that there were three main reasons for issuing the Notice, namely:

1. The tenant built a temporary structure, a portable gazebo, without the written permission of the landlord contrary to rule B2 of the park rules.
2. The tenant had an unlicensed van on the rental site contrary to rule G1 of the park rules.
3. The tenant burned wood and used a wood stove to heat his rental unit contrary to rule B6 of the park rules.

Reason 1 Evidence – Portable Gazebo

The parties agree that most of the portable gazebo has been dismantled as of the date of the hearing. There was some dispute on whether the portable gazebo has been fully dismantled. The agent for the landlord stated that the portable gazebo violation was a safety concern as it could hit someone if there were a major windstorm. The landlord confirmed that the portable gazebo has not injured anyone to date.

The landlord testified that the building of the portable gazebo was a breach of a material term because the park rules indicate that a breach of any condition is a breach of a material condition of the tenancy agreement, and that there is a safety concern related to the portable gazebo if it were to hit someone during a major windstorm.

Reason 2 Evidence – Unlicensed Van

The parties agree that the unlicensed van has since been removed from the rental site. As a result, this portion of the Notice is no longer applicable.

Reason 3 Evidence – Burning Wood / Use of Wood Stove

The agent for the landlord stated that the tenant burning wood inside the manufactured home and the related use of a wood stove for heat was a material breach because the park rules indicate that a breach of any condition is a breach of a material condition of the tenancy agreement, and that burning wood causes concerns including:

- A. Insurance liability issues should the manufactured home site catch fire causing neighbouring homes to catch fire including trees which are in close proximity.
- B. The impact on the health and safety of neighbours due to the particulates in the air (air pollution) from the wood smoke.

The landlord did not provide any supporting evidence to corroborate their claims regarding A above. As a result, I will focus on the evidence to support B above.

The landlord called witness MM, a neighbour of the tenant. The witness stated that she has been living in the manufactured home park for twenty-six years. The witness testified that one of the reasons she moved into the manufactured home park was because of issues related to her asthma medical condition. The witness stated that she

has enjoyed the clean air and has had no issues regarding asthma problems until the tenant began to burn wood in his wood stove. The witness stated that now her asthma medical condition is very bad due to the smoke from the wood stove, which has resulted in the her having to use puffers to assist with her breathing which is a health and safety concern.

The witness stated that she wakes up with swollen eyes full of puss due to the amount of smoke entering her unit, and that she cannot open her windows due to the amount of smoke in the air and that enters her unit. The witness stated that the tenant's use of the wood stove is impacting her health and her right to the quiet enjoyment of her rental site and that "nobody should have to live like this" as the amount of smoke is "just horrific".

The tenant chose not to cross-examine the witness. The tenant did not dispute any of the testimony of the witness during the hearing. The tenant did confirm that he uses the wood stove on a daily basis for heat during the winter. The tenant acknowledged the impact that the smoke was having on the witness, his neighbour, however refused to make any changes to remedy or mitigate the health and safety concerns.

The tenant was asked if he would consider using electric heat or hook up to the natural gas line which the landlord confirmed runs to the property line. The tenant stated clearly that he refuses to change his heating source and will continue to burn wood for heat, although he acknowledged that it violated the park rules.

The tenant acknowledged that he was served by the agent of the landlord with a letter dated November 16, 2012 that warned him that he has not complied with the three items he was cited for on November 13, 2012, namely to remove the portable gazebo, remove the unlicensed vehicle and to stop wood in the wood stove and have it removed from the manufactured home. The tenant was given seven days to comply with the wood burning issue and was advised in writing on November 16, 2012 that if the breach was not addressed there would be just cause to end the tenancy.

In the tenant's documentary evidence it is written that park rules promulgated after the tenancy began are not in compliance with the Manufactured Home Park Regulation Section 30(1) and thus cannot be the basis for an eviction notice. It is also written that the park rule requiring natural gas to the exclusion of all other forms of home heat (without special permission) does not further the safety of other tenants because other forms of heat can also be used safely and the landlord has not proven otherwise.

Analysis

Based on the documentary evidence, oral testimony and on the balance of probabilities, I find the following.

In determining whether the Notice should be cancelled, I first will consider whether the landlord has met the burden of proof to prove that the tenant has breached a material

term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Section 32 of the *Act* states:

Park rules

- 32** (1) In accordance with the regulations, a park committee, or, if there is no park committee, the landlord may establish, change or repeal rules for governing the operation of the manufactured home park.
- (2) Rules referred to in subsection (1) must not be inconsistent with this Act or the regulations or any other enactment that applies to a manufactured home park.
- (3) Rules established in accordance with this section apply in the manufactured home park of the park committee or landlord, as applicable.
- (4) If a park rule established under this section is inconsistent or conflicts with a term in a tenancy agreement that was entered into before the rule was established, the park rule prevails to the extent of the inconsistency or conflict.

Residential Tenancy Policy Guideline 8 – Unconscionable and Material Terms indicates that simply because the parties have put in the agreement that one or more terms are material is not decisive. As a result, the true intention will be considered in determining whether or not the clause is material. The party alleging the breach of the material term has the burden of proof to prove that the term is material, that there is a problem, that the problem is a breach of a material term, that the problem must be fixed by a deadline and that the deadline is reasonable, and that if the problem is not fixed, the party will end the tenancy.

Reason 1 Evidence – Portable Gazebo

I accept based on the testimony of the parties that the tenant's portable gazebo has been moved and either fully or partially dismantled. Therefore, I do not accept that this would constitute a material breach of the tenancy. As a result, I do not find that the landlord has met the burden of proof related to the portable gazebo being grounds to end the tenancy.

Reason 2 Evidence – Unlicensed Van

The parties agreed during the hearing that the unlicensed van has been moved from the rental site. Therefore, I do not accept that this would constitute a material breach of the tenancy. As a result, I do not find that the landlord has met the burden of proof related to the unlicensed van being grounds to end the tenancy.

Reason 3 Evidence – Burning Wood / Use of Wood Stove – Rule B6 of the Park Rules and Regulations

I do not afford any weight to the landlord's assertion that having a wood stove is an insurance liability issue should the manufactured home site catch fire causing neighbouring homes to catch fire, including trees which are in close proximity, due to insufficient evidence. The landlord failed to provide supporting evidence proving that the tenant did not have insurance or that wood stoves are inherently more of a fire risk than natural gas stoves.

I accept that the landlord has met the burden of proof by proving that the burning of wood and the use of wood stoves was a material term of the tenancy. I base my decision on the testimony of the landlord, the agent of the landlord and the witness who described the health impacts of wood burning smoke and the landlords desire to have low emission heat sources in the manufactured home park so that tenants are not impacted by wood burning smoke.

I find that the tenant was aware of the rules prohibiting the burning of wood and the use of wood stoves, and I find that the tenant has willfully ignored written warnings to stop burning wood which could result in his eviction.

Section 30(1) of the *Manufactured Home Park Tenancy Act Regulation* states:

Making rules

30 (1) The park committee or, if there is no park committee, the landlord, may establish, change or repeal a rule if it is reasonable in the circumstances and if the rule has one of the following effects:

- (a) it promotes the convenience or safety of the tenants;
- (b) it protects and preserves the condition of the manufactured home park or the landlord's property;
- (c) it regulates access to or fairly distributes a service or facility;
- (d) it regulates pets in common areas.

I do not find that there has been any evidence presented that that Rule B6 which requires a natural gas heat source only or other heat source with prior written approval of landlord only, was not in existence when the tenancy began. As a result, I do not accept

the tenant's documentary evidence implying that the landlord created rule B6 after the tenancy began.

Based on the undisputed and serious health and related safety concerns described by the witness, I accept that the landlords have limited heating sources to natural gas and other sources by written approval only due to landlord's position that only low emission sources would be approved. This is supported by the landlords willingness to allow the tenant to use electric heat discussed during the hearing as an alternative to tenant burning wood.

Therefore, I afford weight to the witness testimony which was undisputed by the tenant. The witness clearly articulated during the hearing the impact the smoke from the tenant's wood stove was having on her health. The witness described that her asthma medical condition was symptom free until the tenant began burning wood. The tenant declined to cross examine the witness and did not dispute her testimony.

Based on the undisputed testimony of the witness, I accept based on the balance of probabilities, that the witness has suffered from the following due to the tenant burning wood contrary to the park rules and regulations:

1. Asthma symptoms to return and being "very bad" requiring the use of puffers to assist with her breathing.
2. Not being able to open windows due to smoke entering unit after having lived in site for twenty-six years.
3. Impact on her right to quiet enjoyment.
4. The amount of smoke being "just horrific".
5. Waking up with swollen eyes full of puss due to the amount of smoke entering her unit.

I find based on the documentary evidence and the oral testimony that the tenant was advised in writing of the breach of what was described by the landlord as a material term and that the tenant did not make any attempts to mitigate or remedy the burning of wood, even knowing that he may face eviction if he did not comply.

During the hearing, the tenant was specifically asked if he would consider electric heat, which the landlords were willing to agree to during the hearing, or natural gas heat as an alternative to avoid eviction. The tenant refused to stop burning wood and acknowledged that he may be evicted as a result if the landlord was successful once a decision had been made.

Based on the above and taking into account that the tenant has refused to comply with the park rules and in the absence of any evidence to the contrary that the park rules were in existence when the tenancy began, **I find** the landlord has met the burden of proof on the issue of burning wood and the use of the wood stove by the tenant due to the impact on the health and related safety concerns as a result. Asthma is a very serious condition and could lead to emergency medical care if the exposure to smoke

from the tenant continues. As a result, I find the Notice is valid. Therefore, I **dismiss** the tenant's application to cancel the Notice without leave to reapply.

During the hearing, the landlord requested an order of possession verbally. As a result, I **grant** the landlord an order of possession effective **January 31, 2013 at 1:00 p.m.** which is the effective date on the Notice. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that court.

Conclusion

I dismiss the tenant's application to cancel the Notice.

I grant the landlord an order of possession effective **January 31, 2013 at 1:00 p.m.** This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 16, 2013