Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cultus Lake Village
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, DRI, CNC, MNDC, OLC, ERP, RP, OPT, RR, O

Introduction

This face-to-face hearing in the Burnaby Office of the Residential Tenancy Branch (the RTB) dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 59;
- cancellation of the landlord's 1 Month Notice pursuant to section 40;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 60;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 55;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 27;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 58;
- an order requiring the landlords to return the tenant's personal property pursuant to section 58;
- an order regarding a disputed additional rent increase pursuant to section 36;
- an Order of Possession of the rental unit pursuant to section 47; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that on June 5, 2013, she received the landlords' 1 Month Notice sent by the landlords' park manager (the park manager) by registered mail on June 1, 2013. The landlords confirmed that on June 14, 2013, they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on June 5, 2013. I am satisfied that the above documents were served to one another in accordance with the *Act*.

Preliminary Issues

At the commencement of the hearing, I noted that there appeared to have been no need for the tenant to apply for more time to apply for dispute resolution to seek a cancellation of the 1 Month Notice. As the tenant's application to cancel the 1 Month Notice was submitted within the time frame established under the *Act*, the tenant withdrew her application for more time to submit her application. The application for more time to seek cancellation of the landlords' 1 Month Notice is withdrawn.

At the commencement of the hearing, the landlords' park manager made an oral request for an Order of Possession, should the tenant's application to cancel the 1 Month Notice be dismissed.

I informed the parties at the beginning of this hearing that it seemed very unlikely that I would be able to consider all of the issues identified in the tenant's application in the context of a single hearing or application. I also noted that many of the items identified in the tenant's application would only retain relevance should the tenant's application to cancel the 1 Month Notice be allowed and the tenancy continue. I asked the parties to confirm my assessment that the issues that required the most immediate attention involved the landlords' 1 Month Notice and, if the tenancy were to continue, the tenant's application to dispute what she maintained was an additional rent increase not authorized under the *Act* or the *Manufactured Home Park Tenancy Regulation* (the *Regulation*). While many other issues were included in the tenant's application, the most pressing matters that required a timely determination were whether the tenancy should continue and what the correct monthly rent should be if the tenancy were to continue. I asked for their input regarding my proposal to limit the focus of this hearing and my review of the tenant's application to the landlords' 1 Month Notice and the correct amount of monthly rent to be charged for this tenancy. I advised them that I was considering exercising the powers delegated to me under the *Act* by severing all of the other issues identified in the tenant's application from the two issues that appeared to require a timely decision. I noted that if I were to sever the remaining issues from the tenant's application, I would grant her leave to reapply.

The landlords' representatives, including Mr. HMC, the owner and operator of this manufactured home park (the owner), agreed with the above assessment of the issues requiring the most urgent attention. While the tenant did not disagree with my assessment that the two issues set out above were of the most immediate importance, she was still interested in obtaining a decision with respect to each of the items included in her application for dispute resolution. Although I recognized that the tenant remained interested in having the other portions of her application considered, perhaps at a reconvened hearing, I advised of my decision that I would proceed to hear only the

tenant's application to cancel the 1 Month Notice, and, if necessary, the tenant's application to cancel an additional rent increase. I informed the parties that I was severing the remainder of the tenant's application, but allowing her leave to reapply. I took this action pursuant to section 2.3 of the RTB's Rules of Procedure which allows me to dismiss disputes that I determine to be unrelated to the main issues identified in an application with or without leave to reapply.

The tenant confirmed that she had received a copy of the landlords' written evidence, had reviewed that evidence and was prepared to address the issues raised in the landlords' evidence package. The RTB received the tenant's extensive written evidence package on July 8, 2013, three days before this hearing. The owner said that he received a copy of the tenant's written evidence package on July 9, 2013, two days before this hearing. The landlord's other representative, the park manager, testified that she received a copy of the tenant's written evidence package at 6:30 p.m. on July 5, 2013. Although she had looked over some of this material, she said that she had not had a proper opportunity to examine it in detail. The owner testified that he had not had enough time to review the tenant's written evidence.

RTB Rule of Procedure 3.5 requires an applicant to provide written evidence to the extent possible with the application for dispute resolution, and in any event within five days of the hearing. The tenant explained that she had been hospitalized and that this affected her ability to provide her written evidence on time. The Rules of Procedure allow me to disregard late written evidence without an adjournment of a hearing if I were satisfied that one of the parties, in this case, the landlords attempting to obtain an Order of Possession based on a 1 Month Notice, would be prejudiced by the delay involved in reconvening a hearing. In this case, I noted that much of the tenant's written evidence appeared to be most directly related to issues that I was severing from the two issues that I would be willing to consider at this hearing. I also noted that it would be helpful to refer to at least some of the tenant's very late written evidence as it would enable me to understand, at least to an extent, the tangled web of previous arbitration hearings (19 in all as maintained by the tenant) and the judicial review decisions that have been made that may affect my consideration of the tenant's current application.

With the agreement of both parties, I advised that I would give regard to those portions of the tenant's written evidence that had a direct bearing on the landlords' 1 Month Notice and on the tenant's application to cancel an additional rent increase, the only two issues I am prepared to review in the context of the tenant's application.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Has the landlord issued a rent increase in excess of the allowable amount permitted under the *Act* and the *Regulation*?

Background and Evidence

This elderly tenant commenced living in a manufactured home then owned by her son on a manufactured home pad in this manufactured home park (the park) on August 4 or 6, 2006. Although the tenant had a sub-tenancy agreement with her son, she has had no formal tenancy agreement with the owners of the park. The landlords have attempted a number of times to have the tenant sign a tenancy agreement with them, but the tenant has refused to sign one, often objecting to changes in wording that have occurred in the standard wording of agreements used in the park over the years. The parties agreed that the current monthly pad rent is set at $417.00.

Although the tenant has steadfastly maintained that she is not a tenant but a sub-tenant, it would appear that the most definitive statement made with respect to this issue was by way of a February 7, 2013 *corrigenda* to a December 16, 2011 Oral Reason for Judgement issued by B.C. Supreme Court Justice N. Brown. In this corrected portion of the original decision, the Supreme Court revised a sentence in the original decision to read as follows:

> *[35] ...As such, the petitioner is a tenant, and under the MHPTA, is entitled to the same rights as any other tenant.*

Since the original application for judicial review was considered by Justice Brown in December 2011, the tenant's son, who owned the manufactured home and acted as somewhat of a procedural buffer between the sub-tenant and the landlord, has passed away. I note this as it would appear to me that if anything the changed circumstances of the passing of the tenant's son make it even more certain that the tenant enjoys the same rights and has the same obligations as any other tenant under the *Act*. Notwithstanding this observation, the legal principle of *res judicata* renders it outside my jurisdiction to make a finding that varies from that provided by the Supreme Court as to the tenant's status as a tenant and being subjected to the same rights as any other tenant under the *Act*.

The landlord entered into written evidence a copy of the 1 Month Notice, which required the tenant to end this tenancy by July 5, 2013 for the following reasons:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;...*

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

I noted that the effective date of the landlords' notice would automatically correct to July 31, 2013, rather than July 5, 2013.

In very general terms, the park manager described two areas of concern that have led to the issuance of this 1 Month Notice to the tenant.

First, the park manager said that the landlords are very concerned about the tenant's refusal to clean up the outside of the yard associated with her pad rental. The landlords provided copies of the Rules of the Park and the original Agreement that was entered into with the tenant's son which committed the tenant (and subsequently his sub-tenant) to abide by the Rules of Park as set out from time to time. The landlords provided copies of warning letters advising the tenant that they considered her to be in breach of a material term of the tenancy agreement for this pad rental by refusing to clear the yard of an assortment of her belongings that have remained on her premises. She has not found another location to store these belongings since she was successful in obtaining an order from the Supreme Court of B.C. to return to this pad site after being removed from the premises by a bailiff acting on an Order of Possession issued by a Dispute Resolution Officer from the RTB. The park manager and the owner said that they have issued similar letters to other tenants in this park and have obtained compliance from a number of them. However, based on the extent of the clutter, debris and possessions remaining on the tenant's pad site, other tenants are apparently balking at cleaning up their yards if the tenant is allowed to ignore the Rules of the Park and leave her material on her pad site. The landlords provided photographs to support their assertion that the tenant has made little effort to remove the clutter that gives other tenants and prospective tenants a poor opinion of the park and park maintenance. The park manager and the owner gave sworn testimony as to the unacceptable level of housekeeping apparent through the belongings that cover the area around the tenant's manufactured home.

The tenant responded by claiming that everything that the park manager had said was a lie. She also claimed that the owner had been trapped in lies in some of the other dispute resolution hearings. She maintained that she had to keep the possessions on the site so that insurance appraisers could have a proper understanding of the magnitude of losses she suffered when the bailiffs illegally removed her from her

manufactured home against her will and caused extensive damage to her belongings. She also said that she cannot afford to keep these possessions in storage and had nowhere else to send them. She said that she had agreed to the owner's offer to help her remove some of these items. She claimed that she waited for the owner to take action after agreeing to let him remove some of the items, but he never followed up on this offer. This testimony was at odds with the owner's testimony that he would do almost anything to assist the tenant to clean up her pad site and remove the possessions that appear to be of little use or value.

The second portion of the landlords' request for an end to this tenancy involved the disruption and interference that the landlords claim has arisen as a result of this tenancy. The park manager identified many examples of interference with the landlords' operation of the park. She and the owner described situations where the tenant had meddled into the affairs of the park (e.g., walking past areas cordoned off for construction and repair by yellow construction tape to take photographs; entering the office and attempting to retrieve and review documents from the park's files behind the desk). The park manager also testified that the tenant opened the door of the park manager's residence, refused to leave and hurled verbal abuse on the park manager. The police had to be called at that time, although she has no copy of the police report. She said that on other occasions the tenant has called the owner of the park derogatory racist names. The owner confirmed that the tenant has used this type of language to berate him and his ethnic background at times. The park manager also objected to the tenant's frequent attempts to try to cause trouble for the park through calls to public agencies (e.g., Fire Department; Worksafe B.C. etc.,) with no justification. The park manager and the owner also outlined the circumstances surrounding an occasion where the tenant called someone who performs work for the park to remove a furnace from the yard of another pad site. The owner said that he had taken possession of the manufactured home on this site some time ago and only avoided the removal of the furnace because he happened to notice the contractor entering a unit where there was no work order in place.

The park manager testified that the landlords had two other tenants who had intended to appear at this hearing as witnesses. However, both tenants had other matters arise that they had to attend to at the time of this face-to-face hearing some distance from the park. One of these individuals wrote a letter that the park manager entered into written evidence at the hearing. The tenant said that she had no objection to this late submission of written evidence, although I noted that I could not give this late evidence nearly the same weight as direct sworn testimony provided by the author of the letter. The letter reviewed a number of incidents that the author of the letter, another tenant in

the park, maintained resulted from the tenant's attempts to interfere with his financial dealings with his tenants, as well as work he performed for the landlord at the park.

The owner testified that the tenant's refusal to clean up her yard is leading prospective tenants to discontinue looking for residence there because they say that the park looks like "a slum." He said that he is losing potential tenants and has lost three park managers because of the stress that the tenant causes for anyone taking this role. He apologized for the park manager's lack of preparation for this dispute resolution hearing. He said that she agreed to continue her employment until this hearing was completed but intends to end her employment as she and her husband have become very frustrated with the tenant's behaviours. He said that he cannot get anyone to act as a resident park manager because of the ongoing problems and difficulties caused by the tenant. He testified that he is actively looking into his options for selling the park as he cannot continue running this business with the problems caused by the tenant.

The tenant reiterated that everything the park manager said was a lie. She disputed the park manager's testimony regarding her alleged actions to interfere with the park's operations. She said that the park manager and the owner have been engaged in a never-ending campaign to remove her from the park at all costs. She did admit to calling the person who hauls items from the park to include the removal of the furnace on the porch of one of the other manufactured homes in the park. She said that by doing so she thought she was helping the owner in his stated efforts to "clean up the park." She admitted that she placed this call without the landlords' permission or without telling anyone from the park's management that she was doing so.

Analysis

At this hearing, it became very apparent that there was a genuine and deep-seated dislike between the park manager and the tenant. Although they did not engage in any actual name calling during this hearing, they had a difficult time restraining themselves from interrupting one another and from displaying their disapproval for one another at the hearing. When such strong opinions are held and when there have been by the tenant's count 19 arbitration hearings and a number of judicial reviews, motives can easily be attributed to the most innocent of actions or interactions. Under such circumstances, it is often helpful to rely on the evidence of other parties who often act as witnesses in such hearings.

Although the park manager said that two other tenants planned to attend, no one other than the park manager and the owner appeared at this hearing to give sworn testimony to support the landlords' claims that have led to the issuance of this 1 Month Notice.

The park manager supplied a single written statement from one of the two tenants who had planned to attend.

Given the extent of the disruption and interference that the landlords claimed have been caused by the tenant, I would have expected that the landlords would have been able to produce a series of witnesses or witness statements to support their account of the tenant's behaviours that warrant an end to this tenancy for cause. This did not occur. The owner produced no evidence other than his sworn testimony with respect to his claim that two previous park managers have resigned because of the stress created by the tenant. The park manager's husband did not provide any statement regarding the tenant's behaviours that the owner claimed was responsible for his leaving the park. A series of workers, contractors and tenants could also have provided evidence to support the landlords' sworn testimony. They did not do so, nor did the landlords provide written evidence from anyone expressing similar views. By way of explanation, the owner did testify that he realized that his park manager had not properly prepared for this arbitration, perhaps as a result of her intention to end her employment with him shortly. During the hearing, the park manager frequently responded to my requests for corroboration of her testimony by saying that she did not realize she would need to provide such evidence. Equally telling was the tenant's failure to provide witnesses who support her view as to the unacceptability of the actions being taken by the landlords.

Under such circumstances, an Arbitrator is often tasked with deciding which of a series of prospective witnesses needs to provide their direct account of matters involving a claim that a tenant is significantly interfering with or disturbing another occupant of the park or the landlord. In this case, neither party produced anyone who was willing to testify or submit themselves to potential questions from the other party. This may result from the distances involved in travelling from the park to Burnaby where this hearing was held, a journey of at least an hour and a half. However, it is also possible that only those most directly involved in this matter (i.e., the owner and his paid staff; and the tenant) have not wearied of this marathon series of dispute resolution hearings.

Despite the failure of the parties to produce independent witnesses, I am still tasked with making a decision on the balance of probabilities as to whether the landlords have demonstrated sufficient grounds to end this tenancy for cause as per the reasons cited in the 1 Month Notice.

RTB Policy Guideline 8 describes a material term of a tenancy agreement in the following terms:

> *A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.*
>
> *To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.*
>
> *The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive…*

The landlords have fulfilled some of the requirements of demonstrating that the tenant has breached a material term of the tenancy agreement. For example, there is undisputed evidence that the landlords have sent the tenant an effective warning letter advising her of the need to clear her pad site area of the clutter and mess that requires remedy. However, I find that the level of cleanliness required at a site is subject to interpretation and, except in very unusual cases, could not be viewed in the context of the most trivial breach ending a tenancy agreement. There is a continuum of maintenance of a clean site which does not lend itself readily to the definition of a material term of a tenancy agreement as set out in RTB Policy Guideline 8. In considering this portion of the 1 Month Notice, I do accept that there would be some level of uncleanliness and mess on a manufactured home site that would lead to a finding that a tenant had breached a material term of the tenancy agreement. While the photographs and sworn testimony suggests that the condition of the tenant's pad site approaches that level of disrepair that could lead to a finding that the tenant had breached a material term of the tenancy agreement for this pad site rental, I find that the landlords have not adequately demonstrated that the tenant's pad site is in such poor condition that it does in fact constitute a breach of a material term of the tenancy. Corroborating evidence, statements or photographs from other tenants or with respect to other pad sites may have been helpful in establishing that the landlord's application in this regard had been met. Based on a balance of probabilities, I find that the landlords have not established that the tenant has breached a material term of the tenancy agreement for this pad rental under the *Act*.

I now turn my attention to the landlord's claim that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. There is very little if any evidence submitted by the landlord that the tenant has interfered with or disturbed

other occupants of the park. In fact, as was noted earlier, there is very little evidence that others in the park have wanted to become involved in the landlords' most recent attempt to end this tenancy for cause on either side. Given the protracted history of disputes between these parties that may not be altogether surprising.

The issue in dispute thus narrows to whether or not the landlords have demonstrated to the extent required that the tenant has significantly interfered with or unreasonably disturbed the landlord or the landlords' representatives. Many of the examples provided by the landlords rely on their own sworn testimony, contradicted for the most part by the tenant. For example, the entire incident involving the alleged entry of the tenant into the personal living space of the park manager rests solely on disputed versions of events entered into sworn oral testimony and written evidence from the park manager. The total absence of any corroborating witnesses or witness statements for such incidents makes it difficult to allow this tenancy to end on this basis alone. I would also consider the park manager's claim that the tenant routinely enters the office and tries to access the park's files and records was sufficient grounds to end this tenancy for significant interference with the landlords if the landlords had been able to provide independent corroboration of the park manager's claim. However, once again the only evidence provided was the park manager's sworn statement, supported to an extent by the owner.

The deficiencies in the landlords' evidence submitted mainly by a park manager about to leave the landlords' employment does not mean that the tenant has not in fact been significantly interfering with or unreasonably disturbing the landlords. Rather, it means that the landlords have not presented adequate evidence to substantiate many of their allegations.

I found the owner provided compelling and what appeared to be genuine sworn testimony as to the departure of previous park managers and the upcoming departure of the present park manager, the difficulties that he faces attracting tenants when one tenant ignores park rules and refuses to remove clutter and debris from her pad site, and his current efforts to sell the park as a result of his frustration with the tenant's actions. While I found his testimony credible, he produced little other than his sworn testimony to support his statements. Confronted with a tenant who disputed his statements and those issued by the park manager, it would seem that documentation or evidence from other witnesses could have been submitted by the landlords to demonstrate their claim that the tenant has significantly interfered with or unreasonably disturbed the landlords. Such evidence would be necessary and could have been made available by the landlords. It was not produced for this hearing. Although the landlords' sworn testimony came very near to the standard required to obtain an end to this

tenancy for cause, once again I did not find that it crossed that necessary threshold to end the tenancy of an elderly woman who has lived in this park for seven years.

The pattern of alleged interference appears to have escalated over time as the frequency of the incidents cited by the landlords has increased. This pattern has continued to the point where a few weeks after the landlord served the 1 Month Notice, the tenant's actions extended into an area where the landlords have provided undisputed written evidence to support their claim that the tenant significantly interfered with the landlords' operations. The landlord provided a June 18, 2013 statement from the park manager and a signed statement from a Mr. M., a contractor hired by the landlords to pick up scrap mental from the demolition of one of the manufactured homes in the park. As noted in the park manager's record of this incident, the contractor proceeded to another site in the park where he became engaged in trying to remove a furnace from the front porch. As the landlords had not asked the contractor to remove this item and the manufactured home was in fact owned by the park, the owner enquired with the park manager as to why the contractor was at that home site. As the park manager knew of no request to perform work at this home site or remove the furnace, the owner asked the contractor why he was at that site. As confirmed in both the park manager's note and a signed statement from the contractor, the contractor advised that he had received a phone call from a woman telling him to remove the furnace sitting in front of that manufactured home site. Further investigation, confirmed by the tenant at the hearing, revealed that the tenant had taken it upon herself to call the contractor to have the furnace removed from the park. At the hearing, the tenant admitted that she had neither spoken with park management nor with the owner before she placed this call to the landlords' contractor. The contractor clearly understood from the tenant's phone call that she was authorized to act on behalf of the park management to have this item removed from the park.

While the owner was able to stop the contractor from removing the furnace from the park, he was only able to do so because he happened to notice the contractor visiting a site other than the one where he was authorized to conduct work on behalf of the park. The tenant did not request that the landlords' contractor remove a microwave or an old fan from the other pad site. Rather, the tenant meddled with the landlords' work order portraying herself as an individual authorized to approve the removal of perhaps the most significant piece of equipment on this manufactured home, the furnace. The tenant had no idea whether the landlords intended to remove it, repair it, or use it in some other way. I also do not accept the tenant's explanation that she was only trying to help the owner clean up his park. Given the state of her own pad site and the evidence regarding the landlords' attempts to get her to clean up her pad site, I found this a particularly ingenuine statement by the tenant.

The tenant's actions with respect to this furnace incident may very well have crossed the threshold required to demonstrate that the tenant was significantly interfering with the landlord. However, this incident occurred on June 18, 2013, **after** the landlords issued their 1 Month Notice and after the tenant applied to cancel that Notice. I do not believe that the landlords can employ an incident that occurred after the issuance of their 1 Month Notice in their application for an end to this tenancy. Their application succeeds or fails on the basis of the evidence they provided to demonstrate that they had grounds to end the tenancy on the basis of the situation as it existed when they issued the 1 Month Notice. This does not prevent the landlords from issuing a new notice to end tenancy based on actions that occurred after the 1 Month Notice was issued.

As I am unable to consider the furnace incident in my assessment of the landlords' 1 Month Notice, I find that the landlords have not met the threshold required to demonstrate that they had grounds to end this tenancy on the basis of their 1 Month Notice. Therefore, I allow the tenant's application to cancel the 1 Month Notice with the effect that this tenancy continues.

I find that the tenant has not provided sufficient evidence to demonstrate that the landlords have issued a rent increase beyond the 3.8% allowed under the *Act* and the *Regulation* for 2013. The tenant's application in this regard seems to revolve around some type of inadequately explained cumulative tally of rent increases she has received in the past. She said little about this at the hearing. The notices of rent increase that were entered into written evidence are unremarkable and reveal that the landlords appear to have followed the standard procedure for seeking annual rent increases in accordance with the *Act* and the *Regulation*. Certainly that would seem to be the case for the landlords' most recent notice of rent increase. I dismiss the tenant's application to dispute an additional rent increase without leave to reapply, as I find little evidence that any such increase has been sought or obtained by the landlord. The monthly rent remains $417.00, as of May 1, 2013.

As the tenant has indicated a willingness to allow the landlords to provide assistance in removing materials from her pad site and the owner reiterated his willingness to provide this assistance, I urge the parties to make arrangements whereby the landlords can provide assistance to remove items that will improve the condition of the pad site and the park.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice with the effect that this tenancy continues.

I dismiss the tenant's application to dispute an additional rent increase without leave to reapply as I find that no such additional rent increase has been issued by the landlords.

The tenant's application to obtain an extension of time to apply for the cancellation of the 1 Month Notice is withdrawn.

The remainder of the tenant's application is severed from the initial application and dismissed with leave to reapply.

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: July 17, 2013

Residential Tenancy Branch