Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the Act) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 40;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 55;
- authorization to recover his filing fee for this application from the landlord pursuant to section 65; and
- an order "other" remedy.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was accompanied by her agent, who is the property manager for the manufactured home park.

At the hearing the landlord made an oral request for an order of possession in the event I uphold the 1 Month Notice.

Preliminary Issue – Service of Documents

The tenant provided evidence that she served the landlord with the dispute resolution package on 2 June 2015 by registered mail. The tenant provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 82 and 83 of the Act.

The landlord testified that her agent personally served the tenant with the landlord's evidence. The agent confirmed that she personally served the tenant in early June. The tenant attended the hearing and did not contest service. On the basis of this evidence, I am satisfied that the tenant was served with the landlord's evidence pursuant to section 81 of the Act.

The landlord testified that the agent personally served the tenant with the 1 Month Notice. The agent testified that she served the 1 Month Notice two or three days after 15 June 2015. The tenant admitted service of the 1 Month Notice on 18 June 2015. On the basis of this evidence, I am satisfied that the tenant was served with the 1 Month Notice pursuant to section 81 of the Act.

Preliminary Issue – Severance of Issues

The *Residential Tenancy Branch Rules of Procedure*, rule 2.3 provides me with the discretion to sever unrelated claims:

> **2.3 Related issues**
> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the documentary evidence, the tenant's claim and hearing from the tenant, I determined that the tenant's claim in relation to cancelling the 1 Month Notice was unrelated to the other issues raised by the tenant. As the 1 Month Notice is the more pressing matter, I informed the tenant at the hearing that the other issues would only be dealt with if there was time. The hearing lasted 77 minutes. I was unable to hear evidence or submissions on the remainder of tenant's application. As such, I dismissed the remainder of the tenant's claim with leave to reapply.

I explained what this meant to the tenant at the hearing.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began in 2012. Monthly rent under that tenancy agreement was $265.00.

On 15 June 2015 the landlord issued the 1 Month Notice. The 1 Month Notice set out an effective date of 31 July 2015. The 1 Month Notice set out that it was given as the tenant had failed to comply with a material term, and had not corrected the situation within a reasonable time after the landlord gave written notice to do so.

In particular, the material breaches alleged are:

- erecting a greenhouse on the site by the tenant without the landlord's written permission;
- painting the trim and skirting of the manufactured home an unapproved colour;
- parking outside the designated parking spaces;
- displaying a "for sale" sign on the exterior of the manufactured home; and
- signing a petition against another resident of the manufactured home park.

The landlord characterises the greenhouse as the major issue. The landlord testified that at some point in 2012 the tenant began constructing a greenhouse on the site. The landlord testified that her former property manager contacted the landlord to inform her of the activity. The landlord testified that she did not receive drawings from the tenant. The landlord testified that at no time has she provided the tenant with written permission for the greenhouse.

The tenant testified that she spoke with the former property manager who informed the tenant that she required permission to build the greenhouse. The tenant testified that she called and spoke with the landlord. The tenant testified that the landlord reviewed several issues with her regarding the necessities of permits and the footings to be used. The tenant testified that the landlord did not mention anything about the positioning. The tenant testified that she believed that the landlord had provided her verbal permission. The tenant admits that the landlord did not provide written permission.

The landlord provided me with a copy of an email sent to her from the former property manager on 23 April 2012:

> *I looked out my window this morning, and saw my neighbor laying some 2x4's in the back yard. I asked her what she was building. She said a greenhouse. I asked her fi she was aware that she needed permission and approval from you before she built anything. She said not she hadn't, and asked for your phone number….since I am going shopping this morning, I gave it to her. She came over later to tell me she had left a message for you. …*
> *I told her you liked a drawing of the structure, so if she bringing one over I will fax it to you….*

The landlord testified that she arrived at some point after the snow melt in spring of 2012 to inspect the property. The landlord testified that she told the tenant that the greenhouse would have to be removed. The landlord testified that the tenant informed the landlord that she had already planted her vegetables for the year. The landlord testified that she told the tenant that the greenhouse could be removed after the plants had been harvested.

The agent testified that last year when the tenant was asked to move the greenhouse she informed the agent that the greenhouse could not be moved because it was built in place and the roof was unstable.

The tenant testified that she thought the issue was resolved at that point.

The landlord testified that the back area of the site will be needed at some point in the future for a new septic field. The landlord testified that the need for a new septic field will arise quickly and may arise in the winter. The landlord testified that the new installation will require that heavy machinery be used. The landlord testified that she does not want to incur any liability in having to remove the tenant's greenhouse at that later time and wants the area clear. In addition, the landlord testified that the area above a septic field cannot be watered heavily, such as that required for a garden, as the rapid infiltration that results interferes with the soil decontamination of the septic grey water.

The landlord explained that there was a delay in enforcement of the rule because the landlord expected the tenant to respect the agreement to remove the greenhouse after her harvest.

The landlord testified that she provided recent letters asking the tenant to remedy the breach on 5 April 2015, 3 June 2015 and 6 June 2015. The landlord testified that there were several verbal warnings before these written warnings.

In the written warning 5 April 2015, the landlord provided the tenant until 1 June 2015 to move the greenhouse into an area that the landlord viewed acceptable. The letter sets out that the landlord hopes the tenant will comply to avoid the need for further action.

The tenant replied to the 5 April 2015 letter, but did not move the greenhouse.

The landlord wrote to the tenant 3 June 2015:

> ….please know that you were told on several occasions and given verbal requests to move your greenhouse. You are legally required to obey the tenancy contract and the park rules.
>
> …We request that you relocate your greenhouse without further delay or you will receive an eviction notice. You have two weeks from receipt of this letter to have it moved to sit directly behind your home, and no part of the greenhouse can be further from your home than 12 feet.

The landlord wrote to the tenant 6 June 2015:

> [The former manager] was my park manager when you moved into this park and she told you that you need our permission before building your greenhouse. Our park rules and contract support that you need written permission. We told you that you needed to give us a drawing of what you wanted and we would consider whether we would approve it. Further we have had several discussions with you about where this greenhouse could be located and why.
>
> …
>
> We have specific areas where we allow buildings, sheds, greenhouses etc to be located due to our responsibilities as Landlords. In the case of this park, we must be able to rebuild, and replace septic tanks and fields when and where needed. In every case, there must be room for a back up field and we have no idea what time of year that we may have to dig trenches for new septic fields.
>
> …
>
> Therefore, this is your last warning that you are in violation of a material term of the tenancy agreement with us. We will issue you an eviction notice June 16, 2015 or soon after if the violations listed within this letter are not all corrected to our satisfaction.

I was provided with a copy of the tenancy agreement:

> Clause 10: …Any alterations, additions, or improvements to the exterior of the tenant's home or to the Site require the prior written approval of the landlord…
> Clause 15: …the tenant will not make or cause any alteration to be made to the Site.
> Clause 17: The tenant will strictly comply with the Park Rules. The tenant further agrees that the landlord may, upon two weeks written notice, make changes or additions to the Park Rules as deemed necessary of the best interests of the park and its tenants.
> Clause 32: Addendums and / or Park Rules are attached this Agreement, consisting of …3 pages of Park Rules that form part of and are material terms of this Agreement.

I was provided with a copy of the park rules dated April 2011:

> Rule 2: Sites to be attractively maintained by the tenant but please do not dig plants tress or gardens or erect fences or sheds without written consent from the Park Manager as everyone's safety is a concern with gas lines, water lines, septic tanks and fields and power right of ways must be considered.

I was provided with a copy of the new park rules dated April 2014:

> C.1: Any and all additions and alterations to home or attachments thereto must first approved in writing by the Landlord…

The tenant provided me with a letter from RC. RC writes that the tenant told him that she had the landlord's permission and detailed the landlord's instructions. RC writes that in 2013 the landlord came and told the tenant to move the greenhouse. RC writes that he remembers this because he thought that it did not make sense to tell the tenant to move it after they positioned it the year earlier.

The tenant provided me with a letter from JM. JM wrote that he did not understand why the tenant was asked to move the greenhouse in 2013 as if the landlord wanted it there she should have said so prior to it being built.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I find that the tenant received the 1 Month Notice on 18 June 2015. The 1 Month Notice set out that the tenant had failed to comply with a material term, and had not corrected

the situation within a reasonable time after the landlord gave written notice to do so. Paragraph 40(1)(g) of the Act permits a landlord to end a tenancy on this basis.

Residential Tenancy Policy Guideline, "8. Unconscionable and Material Terms" provides guidance as to material 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. ... Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.
>
> To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:
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> - that there is a problem;
> - that they believe the problem is a breach of a material term of the tenancy agreement;
> - that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
> - that if the problem is not fixed by the deadline, the party will end the tenancy.
>
> [emphasis added]

The tenancy agreement and both versions of the park rules all contain clauses that set out clearly that the tenant is not permitted to make alterations to the site without permission from the landlord. This reiterative structure indicates that it is a very important provision. It is integral that the landlord be able to exercise control over alterations to the physical property that are beyond minor. It is not the tenant's right to freely make alterations to the property. The purpose is to protect the property by

maintaining the integrity of the site. For these reasons, I find that the terms regarding alterations to the site are material terms.

I have not been provided evidence by the tenant that the landlord has waived her rights to enforce the terms and rules.
In this case the tenant has built a greenhouse on the site. The tenant does not have written permission from the landlord to build this greenhouse. The tenant argues that she had the landlord's verbal permission to build the greenhouse.

On the basis of the documents provided and the testimony before me, I find as follows:

- The tenant was told by the former property manager that she required the landlord's permission. The tenant was told by the property manager that a drawing of the structure was requested.
- The tenant telephoned the landlord and spoke about the proposed greenhouse.
- The landlord provided parameters by which a greenhouse would be allowed.
- The location of the greenhouse was never agreed upon.
- There was a miscommunication regarding the significance of this telephone call: the tenant viewed that she had received permission; the landlord had only relayed conditions under which the greenhouse could be built.
- No permission was given for the greenhouse.

The landlord has alerted the tenant to the issue of the greenhouse many times. I find that in her letter of 6 June 2015, the landlord warned the tenant in writing:

- that there was a problem;
- that the landlord believed the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I find that in light of the prior warnings delivered verbally over the course of the years and increasingly in writing over the past few months, the tenant was put on ample notice that her tenancy was in jeopardy by refusing to reposition the greenhouse. As such, I find that the one-week time period to comply was reasonable. As the tenant continued to refuse the landlord's request to comply with the tenancy agreement, I find that the tenant has failed to comply with a material term, and had not corrected the situation within a reasonable time after the landlord gave written notice to do so. Therefore, the 1

Month Notice is valid and the tenant's application to cancel the 1 Month Notice is dismissed without leave to reapply.

Pursuant to section 48 of the Act, where an arbitrator dismisses a tenant's application or upholds the landlord's notice and the landlord makes an oral request for an order of possession at the hearing, an arbitrator must grant the landlord an order for possession. As the tenant's application is dismissed and the landlord has made an oral request for an order of possession, I am obligated by the Act to grant the landlord an order of possession. The order is valid two days from service or at the end of the period for which the tenant has paid for her use and occupancy of the site.

As the tenant has been unsuccessful in her application she is not entitled to recover her filing fee.

Conclusion

I grant an order of possession to the landlord effective the later of **two days after service of this order on the tenant(s) and one o'clock in the afternoon on 31 July 2015.** Should the tenant(s) fail to comply with this order, this order may be filed 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 subsection 9.1(1) of the Act.

Dated: July 24, 2015

Residential Tenancy Branch