Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Retirewest Communities
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction
This hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause. Both parties appeared. Both parties waived any procedural irregularities and indicated their desire to have the matter proceed on the date set for hearing.

Issue(s) to be Decided
Is the 1 Month Notice to End Tenancy for Cause dated January 21, 2016, valid?

Background and Evidence
There are three separate contacts between the landlord and the tenant – two tenancy agreements and a storage agreement.

The first tenancy agreement relates to pad #15. That tenancy commenced June 1, 1999. There is a written tenancy agreement signed by the tenant. This is the tenant's residence. She lives there with her friend/caregiver, AH. The tenant says her friend is a tenant of hers; not of the manufactured home park.

That tenancy agreement contains the following clause:

> "6. (b). The tenant must maintain ordinary, health, cleanliness and sanitary standards throughout the manufactured home pad and manufactured home park. The tenant must take the necessary steps tor repair damage to the manufactured home pad and the manufactured home park caused by a wilful or negligent act or omission of the tenant or invited guests of the tenant. The tenant is not responsible for reasonable wear and tear to the manufactured home pad."

The second tenancy agreement relates to pad #81. This tenancy commenced in January 2010. The manufactured home on this site has only ever been used by the tenant for storage. There is a written tenancy agreement that names the tenant and her friend/caregiver as tenants and is signed by both of them. The tenant says she does

not remember signing this agreement but acknowledges that the signatures are of her and her friend/caregiver.

The tenancy agreement contains the following clauses:

> "10. . . the Tenant agrees to the following as material terms of the tenancy: . . .
> g) that the tenant will comply with the Park Rules.
> h) that vehicles parked on the Site or in the Park must be currently insured for use on public roads and must be in operating condition.
> j) that the Tenant will maintain ordinary health, cleanliness and sanitary standards throughout the Site and the Park . . ."

There are Park Rules. The most recent version was distributed to the tenants in October 2015. The tenant acknowledged of the Park Rules at that time.

The relevant portion of the Park Rules state:

> "Vehicles . . .
> (b) Only 2 licenced vehicles shall be permitted per home site.
> (c) All vehicles in the Park or on the Site must be operational, have a current licence and insurance for use on public roads.
> (d) Automobile, boat, motorcycle repairs or mechanical repairs of any kind are not allowed on home sites.
> (e) No parking is allowed on Park lawns or on home lawns at any time.
> (f) Additional recreational vehicles, quads, boats, utility trailers or large trucks (over ¾ ton) and commercial vehicles must be stored in the RV Storage Area or removed from the Park. . . .
>
> Any breach of these Park Rules by the Tenant will be considered a breach of a material term of the Tenancy Agreement and may result in a Notice to End Tenancy or other penalty as provided by the *Manufactured Home Park Tenancy Act* and *MHPT Regulations*.
>
> If any provision of these Park Rules is held invalid, illegal or unenforceable by a court or any other tribunal of competent jurisdiction, the provision shall be deemed to be severed and have no further force or effect. All other provisions of these Park Rules shall remain in full force and effect."

The third agreement relates to a storage area owned and operated by the landlord. The manager testified that the storage fees are separate from pad rent. He also testified that tenants are not required to use this storage area.

The tenant testified that before she placed anything into the storage area the landlord had advised tenants that they would have to pay $25.00/month/unit to store anything in this area. In 2010 she started parking a closed utility trailer in the storage area. Subsequently she moved a motor vehicle and a boat trailer into the storage area. There was no written storage agreement at that time.

In May 2015 the new park manager asked AH to sign a storage agreement. The tenant's position is that AH was forced to sign the document in order to access the storage area and since AH is not a tenant of the park, he cannot sign a storage agreement as a tenant, nor can he sign a contract as her agent, so the written contract is invalid.

The tenant paid the rent for all her units in storage until September 2015. At that time, relying upon the legal advice provided by her neighbours, the tenant took the position that she had no contractual obligation to pay the storage fees and ceased doing so.

The tenant moved the motor vehicle to pad #81 because she did not want to pay a storage fee for it. The tenant testified that the vehicle has not been licenced for many years. It also needs repairs before it will be road worthy. She plans to have the repairs done but has not yet done so.

The landlord has given the tenant several written notices requiring her to move the motor vehicle but she has refused to do so on that the grounds that the tenancy agreement and the rules in place at the time the tenancy agreement was signed (a copy of this version of the rules was not filed in evidence) does not require a vehicle parked on a pad to be licenced or road worthy.

On October 11, 2015 one of the tenant's neighbours called the park manager to complain about the activity at pad #81. The tenant had bought two used port-a-potties for use at a cottage. The tenant says the vendor told her that the units had been sanitized. However, there were cobwebs and dust in the outhouses for AH took them apart and was power washing them. She also testified that they only used ordinary household cleaners for this task.

When the neighbour called the park manager he immediately went to the site – very upset – and a confrontation unfolded that included calls to the police and Environmental Services. At the end of the day AH finished power washing the outhouses and moved them out of the park the next day.

The park manager testified that when he called Environmental Services they told him that the tenant should not be washing outhouses where they were. He also testified that he called the vendor who told him that he does not take the outhouses apart when he cleans them. The landlord's witnesses both expressed the view that human waste was washed from the outhouses onto the ground.

The other witness for the landlord testified that in a previous career she had lots of experience with this type of outhouse. She testified that the stain evidence in the photographs looked like a "urinal puck stain", which would not be there if the outhouse had been properly cleaned to start with.

The tenant filed a statement from the vendor confirming that he had sanitized the outhouses before selling them to her.

The tenant also filed a report from the Environmental Health Officer which stated in part:

- "Details of complaint were that on October 11, 2015, two port-a-potties were cleaned on the lawn of one of your properties at . . mobile home park; that a multi-purpose cleaner & disinfectant was used; and that faeces and mould could be seen on the ground as result of the cleaning.
- My initial opinion was that if the complaint is proven, the cleaning of a port-a-pottie to remove faecal matter is not an acceptable activity in a mobile home park and any contamination should be cleaned-up. However, due to heavy rains on October 11 & 12, 2015, a clean-up is likely not necessary as any contamination would have been washed away.
- In response I contacted you on October 15, 2015, and you advised that the port-a-potties were cleaned and disinfected prior to purchase, and that the cleaning was done to remove dirt, cobwebs, and other debris.
- Based on the information you provided I am of the opinion that the complaint is not proven. That is, the cleaning of the port-a-potties most like did not result in release faecal matter and therefore a risk to public health did not occur.
- In follow-up you contact me on October 25, 2015 to request written details of the results of my complaint investigation, During our phone conversation I reviewed with you the MSDS for the cleaning product that was used (i.e. ZEP House and Siding Cleaner Concentrate) and forwarded you a copy. The MSDS does not list any environmental effects, nor does it list any chronic or carcinogenic health effects. Acute human health effects would be exposure to full strength product, and you informed me that it was diluted for use. Based on my review of the MSDS I am of the opinion that use of this product did not result in a risk to public health."

The landlord's response is to point out that the officer never came to the site to investigate and to ask what would have been the result if it had not rained. The park manager also testified that he never had any follow-up from Environmental Services.

A few days after this incident the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause. The tenant disputed the notice and a hearing was conducted on January 21, 2016. The tenant's application was granted; primarily because the reason stated on the notice was that the tenant had breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so but no one filed a copy of the tenancy agreement in evidence.

The landlord issued a new 1 Month Notice to End Tenancy for Cause on January 21, 2016 and served it on the tenant. The notice only referred to pad #15. The reasons stated on the notice were:

- "Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord.
  - significantly jeopardized the health or safety or lawful right of another occupant or the landlord.
  - put the landlord's property at significant risk.
- Tenant has caused extraordinary damage to the unit/site or property/park.
- Tenant has not done required repairs of damage to the unit/site."

This time breach of a material term of the tenancy agreement was not listed as a reason for the notice.

In his testimony the park manager stated that the reasons for the notice were:

- The potential damage to the park caused by cleaning the outhouses.
- The damage to the site caused by the tenant parking the unlicensed motor vehicle on the lawn.
- The tenant's refusal to pay storage charges.

A great deal of evidence was devoted to whether the motor vehicle was parked on lawn on which the tenant had removed the grass and added gravel in an effort to make it look like a driveway or whether the vehicle was parked on a gravel driveway that was overgrown with grass. There was also conflicting evidence as to whether the vehicle was leaking any noxious substances.

Analysis

Notice to End Tenancy

As stated at the outset of this decision the tenancy of pad #15 is separate from the tenancy of pad #81. The landlord's complaints regarding the unlicensed motor vehicle and the outhouses relate to activities at pad #81 yet the notice to end tenancy was given for pad #15. It is for this reason alone that the 1 Month Notice to End Tenancy for Cause dated January 21, 2016, is set aside and is of no force or effect.

This decision resolves this dispute. However, in the interests of helping the parties come into compliance with the law and to minimize the chances of future disputes I am going to offer the following observations on some of the issues raised in this hearing and the one previous.

Park Rules

Section 32 of the *Manufactured Home Park Tenancy Act* allows a landlord to establish, change or repeal rules for governing the operation of a manufactured home park. The section also specifies that if a rule conflicts with a term in a tenancy agreement that was entered into before the rule was established, the park rule prevails over that term of the tenancy agreement.

The *Manufactured Home Park Regulations* sets out the requirements for a valid park rule. Section 29(1) specifies that prior to a person's entering into a tenancy agreement with a landlord, the landlord must disclose in writing to that person all rules in effect at the time of his or her entering into the tenancy agreement. Subsection 2 provides that after a person has entered into a tenancy agreement, the landlord must give notice in writing to that tenant of any new rule or rule change at least two weeks before the rule becomes effective.

Section 30(1) states that a 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.

Subsection 30(3) provides that a rule or an amendment to a rule is enforceable against a tenant only if:

(a) The rule applies to all tenants in a fair manner;

(b) The rule is clear enough that a reasonable tenant can understand how to comply with the rule;
(c) Notice of the rule is given to the tenant in accordance with section 29; and,
(d) The rule does not change a material term of the tenancy.

The portion of the Park Rules relating the vehicles meets all of the legislative criteria. The tenant is bound by the current Park Rules which prohibit the parking of an unregistered or unroadworthy motor vehicle on any pad. If the tenant does not comply with the Park Rules within a reasonable period after receipt of this decision, an arbitrator may find that the tenant has breached a material term of the tenancy agreement.

Outhouses

At the very best, the tenant's action in cleaning used outhouses in such close proximity to her neighbours was inconsiderate. At its worst, as stated by the Environmental Officer, "the cleaning of a port-a-pottie to remove faecal matter is not an acceptable activity in a mobile home park".

The tenant's position that they did nothing wrong is based solely upon the undertaking of the vendor; which may or may not be truthful. If he was not truthful with her, this was not a harmless act. This is a possibility she should have considered when thinking about the possible consequences of her actions on her neighbours.

It is clear from the Environmental Officer's letter that no further investigation was undertaken because the office was of the opinion that the heavy rains that occurred immediately after the outhouses were cleaned washed away any contamination.

I could not determine from the evidence before me whether faecal material was actually washed out of the outhouses and the evidence from the appropriate independent authority was that any possible contamination was immediately removed by the heavy rains. Because the risk was immediately removed I would not have found, if required to do so, that any of the reasons listed on the notice to end tenancy had been established by the landlord on a balance of probabilities. However, if it had not rained as it did, the outcome of the investigation and a dispute resolution proceeding might have been different.

Storage Contract

The storage contract is a separate agreement and enforcement of it is outside the jurisdiction of the *Manufactured Home Park Tenancy Act* and the Residential Tenancy Branch. I would advise the parties that a general principle of law is that any oral agreement, except an agreement for the purchase or sale of real property, is a binding

contract. I would also advise the tenant that, generally speaking, neighbours, friends and/or relatives are not the most reliable sources of legal advice.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated January 21, 2016, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

As the tenant did not pay a fee to file this application, no further order is required.

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: April 01, 2016

Residential Tenancy Branch