



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HYGGE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenants' 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; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 65.

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.

As the tenants confirmed that they were handed the landlord's 1 Month Notice on January 2, 2018, I find that this Notice was duly served to the tenants in accordance with section 81 of the *Act*. As the landlord confirmed that the tenants handed him a copy of their dispute resolution hearing package on or about January 8, 2018, I find that the hearing package was duly served to the landlord in accordance with section 82 of the *Act*. Both parties also confirmed that they had received one another's written evidence, which I find was duly served in accordance with section 82 of the *Act*.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Tenant CM (the tenant) entered into a written tenancy agreement for a manufactured home park pad rental for the tenants' existing pad site in June 2002. Monthly rent for this site is currently

set at \$689.00, payable in advance on the first of each month. The parties agreed that this monthly pad rental is scheduled to increase to \$720.50 as of March 1, 2018.

In January 2015, the landlord entered into discussions with existing tenants of the 20 pad sites in this manufactured home park. At that time, the park was for sale and the residents were concerned that new purchasers might wish to redevelop the park for other purposes that would require them to vacate the park.

On or about Wednesday, January 7, 2015, the current landlord (the landlord), who at that time had not yet purchased the manufactured home park, met with residents to discuss his plans. At the hearing, the landlord described the purpose of that meeting as two-fold. First, the current landlord offered the tenants the opportunity to sign an agreement with him in which they would be allowed to enter into a ten-year tenancy agreement with him, but at an increased monthly pad rent of \$625.00 instead of the existing \$536.00. This arrangement was to enable him, or more correctly his company, to secure financing. The landlord said that the second objective in obtaining an agreement with the existing residents of the park was to ensure that he would have their written permission to reconfigure the park, requiring some manufactured homes to be moved from their existing locations so as to enable a more efficient use of space within the park and allow for 30 pad sites instead of the existing 20 sites. This proposal would make the park more viable as a prospective investment for him and his company (the current corporate landlord named above). At the meeting, the landlord asked those in attendance to sign documents attesting to their agreement to the commitments he was seeking in order to encourage him to move forward with his plans to purchase the park and continue to operate it as a manufactured home park.

While the tenant attended the January 7, 2015, they said that they only understood at that time that the landlord, then the prospective purchaser, was interested in obtaining the commitment to allow the tenants' pad rents to be increased, as a means of enabling him to secure the financing he needed to make this park viable. The tenant testified that there was only a brief mention of the possibility of relocation within the park at the meeting of January 7, 2015.

The landlord entered into written evidence a copy of a January 10, 2015 agreement (the Agreement) between the prospective landlord (at that time identified by his name) and another individual (LAW) as the "prospective lessor", and the tenant as the "prospective lessee." There is a notation on this Agreement that the prospective lessors intended to incorporate a company to be held by them, which subsequently occurred. Although the tenant's legal counsel entered into written evidence a similarly worded Agreement, it was undated and was only partially signed, which is of no significance to the matters under consideration in this hearing.

This Agreement was entered into on January 10, 2015, before the current landlord's company purchased the manufactured home park on February 20, 2015.

The preliminary section explaining the purpose of the Agreement read in part as follows:

...AND WHEREAS in the interest of securing financing to finalize the acquisition of the Property the proposed Lessor requires that the monthly rent paid by the proposed Lessee be not less than \$625.00 per month...

This arrangement was outlined as follows in Section 1 of the six section Agreement:

1. The proposed Lessor and proposed Lessee agree that in consideration of the proposed Lessee agreeing to pay an adjusted monthly pad rent of \$625.00 per month, commencing on the first day of March 2015, to and including the last day of February 2016, and thereafter a monthly rent of not less than \$625.00 per month, plus an annual rent increase as permitted by Provincial Legislation, the proposed Lessor will grant to the proposed Lessee a Lease for a term of not less than 10 years.

Section 2 of the Agreement read in part as follows:

2. The Lease will contain provisions to contain among other things:...

b) the proposed Lessor to relocate the proposed Lessee's rental pad on the Property at the proposed Lessor's expense...

Although the tenant and those identified in the Agreement as Proposed Lessors signed this Agreement, no subsequent Lease referred to in the Agreement was signed. At the hearing, the landlord said that none of the residents signed actual Leases or new Tenancy Agreements with his company after his company took possession of the park. The landlord said that new tenants have signed these Leases/Tenancy Agreements including the provision in section 2(b) outlined above, which he viewed as an essential part of the 2015 purchase of the park.

The landlord admitted that it had taken longer than he had envisioned to make progress with the plans to reconfigure the park, requiring some of the manufactured homes to be repositioned at the landlord's expense to other locations on the property. This did not occur until the landlord sent all residents within the park a November 20, 2017 email. In that email, entered into written evidence by the tenant's legal counsel, the landlord outlined his general plans, much of which appears to have been prompted by an opportunity to obtain new tenants from those being evicted from another manufactured home park as of May 15, 2018. The landlord noted that he had already spoken with a number of tenants whose manufactured homes would need to be relocated to other positions within the park. In his email, the landlord also provided information regarding the plans to accommodate these moves within the park.

The parties confirmed that they had some discussions about the landlord's plans for the proposed relocation of the tenants' manufactured home. In the landlord's written evidence, he referenced a specific meeting he had with the tenants on January 1, 2018, in which he asked

whether or not he would be allowed to move their manufactured home at his expense “as agreed to in the original lease offering & contract.”

The tenants and their legal counsel maintained that the tenants had never actually declined the landlord’s request to allow him to move their manufactured home to another location. The tenant said that at the January 1, 2018, she raised questions about the extent to which the landlord would be absorbing the full costs of the relocation of their manufactured home. The tenant also wanted to know whether the landlord would be providing the same level of fencing for their dog at the new site, whether some of the add-ons on their lot would be relocated or replaced to their satisfaction, and whether the landlord could provide them with details as to the proposed positioning, size, location and proximity to neighbouring manufactured homes. As the tenants were not satisfied with the level of detail provided by the landlord to these types of questions, they advised the landlord in a January 2, 2018 email that they had decided to consult with their lawyer with respect to this matter.

At the hearing, the tenant’s lawyer raised a number of questions with respect to the extent to which the landlord was willing to commit to reimbursing the tenants with their costs of relocation and to assume liability for any damage that might arise out of the relocation of their manufactured home.

The landlord testified that his discussions with some of the other residents within the park have gone well, and are leading to the advancement of his plans to reconfigure the park. However, the landlord maintained that the tenants have made it clear to him that they refuse to be relocated. After receiving the tenants’ January 2, 2018 email, the landlord issued the 1 Month Notice in which he sought an end to this tenancy for cause for the following grounds:

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

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;...*

At the hearing, the landlord confirmed that he was not maintaining that the tenants have jeopardized either the health or safety of other occupants or the landlord. Rather, the landlord issued the 1 Month Notice solely on the alleged jeopardization of his lawful rights, as outlined in the Agreement.

The tenant’s legal counsel noted that the Agreement entered into between the tenant and the landlord occurred before the landlord owned the property. The tenant’s legal counsel noted that many of the provisions that would be typical of an actual tenancy agreement were not contained in the Agreement. Whereas the Agreement references that the “Lease will contain provisions”, which included the requirement at Section 2(b) that the tenant agreed to the relocation of the tenants’ manufactured home to an unspecified other location in the park, no signed “Lease” was ever entered into between the parties after the landlord took over ownership of the park. As such, the tenant’s legal counsel asserted that the only valid tenancy agreement in place between the owners of this park and the tenants is that signed in 2002, when this tenancy

began. The tenant's legal counsel maintained that the Agreement is neither a valid lease nor a valid amendment to a lease or tenancy agreement. Despite the tenant having signed the Agreement, the tenant's legal counsel noted the wording of section 2 of the *Manufactured Home Park Tenancy Regulation*, which renders unconscionable any term that is oppressive or grossly unfair to one of the parties.

Analysis

While I have turned my mind to all the documentary evidence, including documents, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here.

When a tenant applies to cancel a notice to end tenancy within the time frames required under the *Act*, the burden of proof rests with the landlord who issued the notice to demonstrate that there was valid reason to end the tenancy for the grounds cited in the notice as of the date when that notice was issued. As the tenants applied to cancel the landlord's 1 Month Notice within the time frame for doing so, the landlord must demonstrate on a balance of probabilities that the 1 Month Notice met the following requirements of section 47 of the *Act* as of January 2, 2018:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*

(d) the tenant or a person permitted on the residential property by the tenant has...

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,...

As was noted above, the landlord confirmed that the 1 Month Notice was issued because he believed that the landlord's lawful rights had been seriously jeopardized.

The lawful right that the landlord is referring to is the Agreement that he and another individual presumably part of the current company that owns this manufactured home park signed as "prospective lessors" with the tenant as the "prospective lessee." The landlord appears to be asking that the Agreement signed before he or his company even owned the manufactured home park established a lawful right that could only have been obtained if he were the owner of the property at that time. To accept that this could be established could potentially interfere with the rights of the landlord who did own the property at that time. It would introduce a whole separate set of rights for prospective purchasers of tenanted properties that is at odds with the legislation and established property rights.

While this agreement may have established a contractual relationship between the parties, I do not find it is a manufactured home park tenancy agreement or even an amendment of the existing tenancy agreement. One such valid tenancy agreement already existed at the time of

the signing of this Agreement. An agreement or an amendment of an existing agreement could not be undertaken by individuals who could not yet at the time of the signing of the agreement be defined as landlords under the *Act*.

The provisions, especially as they apply to everything outlined in section 2 of the Agreement, establish that “The Lease will contain provisions”, a signal that some future as yet unsigned “Lease” would be required to give effect to the provisions of all of section 2. At the time of the signing of the Agreement, the parties appear to have been setting the stage for the future signing of “The Lease,” which both parties agreed never occurred. I also note that the wording in the preamble to section 2 of the Agreement varies significantly from the provisions in section 1 of the Agreement, which had no such reference to an as yet to be exercised future Lease. This wording lends further support to the tenant’s assertion that the primary focus of the Agreement as described to tenants at the January 7, 2015 meeting was to assist the purchaser in securing financing for the acquisition of the park.

Based on the assurances offered by the landlord at the hearing, I do not have the same level of concern as did the tenant’s legal counsel as to the lack of clarity in the description of the expenses the landlord committed to undertake for the relocation of the tenants’ manufactured home. However, the tenant’s legal counsel did identify valid distinctions between the level of detail required in the *Act* for tenancy agreements as opposed to the vague wording used in the Agreement. There is an existing tenancy agreement in place for this pad rental, which is specific to this manufactured home park pad site. A general agreement allowing the landlord to relocate the tenant from the existing defined site to some as yet to be determined location of indeterminate size and utility would not meet the standards required for a manufactured home park tenancy as outlined in the *Act* and the *Regulation*. For example, paragraph 6(3)(c) of the *Act* requires that terms of a tenancy agreement (or an amended tenancy agreement) must be “expressed in terms that clearly communicates the rights and obligations under it.” Paragraph 12(1)(b) of the *Regulation* requires that a landlord must include in a tenancy agreement “the boundaries of the manufactured home site measured from a fixed point of reference.” This further reinforces the view that the Agreement was designed to set the stage for some more thorough and legally enforceable lease or amendment to the existing tenancy agreement which the landlord drafted but was never agreed to by both parties.

In the absence of any new “Lease” or amended manufactured home park tenancy agreement between the parties, the existing tenancy agreement entered into in 2002 governs this tenancy. For these reasons, I find that the landlord’s lawful rights under the *Act* are limited to those that the corporate landlord obtained when this property was purchased from the previous owner of this manufactured home park in February 2015. Even if the Agreement signed on January 11, 2015 does establish some type of lawful right or interest for the landlord, which I believe it does not, I find that these rights are insufficiently described in the Agreement to the extent that they do not enable the landlord to obtain an Order of Possession for cause on the basis of the tenants’ serious jeopardization of the landlord’s lawful right or interest in the property. Finally, I also find that the landlord has not established to the extent required that by the January 2, 2018

date of the issuance of the 1 Month Notice that the tenants had rejected the landlord's proposal to relocate their manufactured home within the park. The tenants' email of that date simply stated that the tenants were planning to seek the advice of legal counsel, a reasonable approach to take given the magnitude of the decision they were facing at that time.

For the reasons outlined above, I allow the tenants' application to cancel the 1 Month Notice.

As the tenants have been successful in their application, I allow them to recover their \$100.00 filing fee for this application, pursuant to section 65 of the *Act*.

Although the parties were unable to reach a resolution of their dispute during the limited time available during this hearing, this decision does not mean that the parties are prevented from continuing their discussions to see if they can achieve a satisfactory resolution of their concerns to their mutual benefit. I would encourage both parties to continue their efforts to identify a solution that is to their mutual benefit in ensuring the long term success of this manufactured home park community.

Conclusion

I allow the tenants' application to cancel the landlord's 1 Month Notice, which is no longer of any force or effect. This tenancy continues until ended in accordance with the *Act*.

To give legal effect to the monetary award of the tenants' filing fee for this application, I order the tenants to reduce a future monthly pad rental payment to the landlord by \$100.00.

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: February 26, 2018

Residential Tenancy Branch