Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORT 4 HOMES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on May 28, 2018 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated May 22, 2018 (the "Notice").

The Tenant appeared at the hearing. The Tenant called a witness at the hearing. The witness was asked to leave the room until required and the Tenant confirmed she did so. The Representative appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. Both parties and the witness provided affirmed testimony.

The Tenant had submitted evidence prior to the hearing. The Landlord had not submitted evidence. I addressed service of the hearing package and evidence. The Representative confirmed she received these and raised no issues in this regard.

Both parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence submitted and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?

2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession under section 55 of the *Act*?

Background and Evidence

Neither party submitted a written tenancy agreement. The Representative testified that there is a written tenancy agreement between the Landlord and Tenant regarding the site. The Tenant was not sure whether there was a written tenancy agreement but took no issue with the Representative's testimony on this point. The Representative said the agreement was originally between the Tenant and the owner of the company that is now the Landlord but the owner incorporated and the agreement was assigned to the Landlord. Both parties agreed on the following. The tenancy started in October of 2016 and is a month-to-month tenancy. The agreement was signed by the Tenant and Landlord.

The Notice is addressed to the Tenant. It states the grounds for the Notice as a "[breach] of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so". The Notice includes details of the breach being repeated warnings about site maintenance and upkeep that have not been complied with. The Notice has an effective date of June 22, 2018.

The Representative testified that the Notice was posted on the Tenant's door May 22, 2018. The Tenant testified that she received the Notice May 22, 2018 and agreed it was posted on her door.

The Representative testified as follows. The manufactured home park has rules about site standards. The Tenant has not complied with these rules over a long period of time. A warning letter was issued to the Tenant regarding this. The Tenant did not comply with the warning letter. The Tenant complied after she received the Notice.

The Tenant had submitted a copy of the warning letter. It is dated May 15, 2018. It states the Tenant is not in compliance with the rules or tenancy agreement regarding "lawn mowed and weeds managed" and "clean and maintain exterior". It asks the Tenant to comply with the rules by May 18, 2018. It states at the bottom "If you do not comply in a satisfactory manner within the time frame indicated you are subject to eviction".

The Representative testified that the Tenant was given several verbal warnings about maintenance of the site. She said the first written warning was the warning submitted as evidence dated May 15, 2018. She said she told the Tenant that if she did not comply with the warning letter she would serve a notice to end tenancy on her.

The Representative testified that the park rules form part of the tenancy agreement. She said it would have indicated on the last page of the agreement that the park rules were attached. She said there would have been three pages of park rules attached and the Tenant would have initialed each page. The Representative did not have a copy of the park rules with her and therefore could not tell me what the park rule at issue in this matter says. She said there is a section in the rules about maintenance and keeping up appearances. She testified that the park rules would have been reviewed with the Tenant upon signing the tenancy agreement. She testified that the tenancy agreement states that the park rules "form part of and are material terms of this agreement". She submitted that the park rules are material terms of the tenancy agreement.

The Representative made the following submissions regarding the park rule in question being a material term. There is a high level of ownership pride in the manufactured home parks the Landlord runs. Unmaintained homes reduce property values and negatively impact the manufactured home park industry. The maintenance rules go to the heart of the community and keep property and home values up. The rules are important for others in the park to be able to enjoy their homes.

The Representative submitted that the *Manufactured Home Park Tenancy Act* (the "*Act*") states that park rules are material terms of a tenancy agreement. She did not point me to a section of the *Act* that states this.

I asked the Representative why she did not submit a copy of the tenancy agreement and she said she thought the Tenant's evidence was sufficient for this application and that it is the Tenant's application and therefore her onus to prove it.

I asked the parties about any discussions they had about the park rule in question when the tenancy agreement was entered into. The Representative could only speak to standard practice in this regard and was not able to speak to what occurred when the Tenant signed the tenancy agreement. The Tenant said she just signed the agreement and that nobody sat down and talked to her about the agreement.

The Tenant agreed that the May 15, 2018 letter was the first warning letter she received about the maintenance issue.

The Tenant said the park rules must have been attached to the tenancy agreement. She then said she assumes the park rules were attached but it has been a while since she signed the agreement and cannot say what she signed. She testified that nothing was really reviewed when she signed the tenancy agreement, she just signed it. The

Tenant did not know whether the tenancy agreement said the park rules are material terms of the tenancy agreement.

The Tenant made the following submissions regarding the park rule in question being a material term. She agrees front yards need to look great. She does not believe a breach of the park rule in question should result in the end of the tenancy. She is not agreeing the term is a material term of the tenancy agreement.

Much of the Tenant's submissions focused around having cleaned up the front garden after the Notice was issued. The Tenant agreed the state of the front garden was not in line with the park rules previously and stated she did not really read the park rules.

I allowed the Tenant to call the witness and allowed the Representative to ask the witness questions. I will not detail this evidence here as I did not find it relevant to the issues before me.

Analysis

Section 40 of the *Act* allows a landlord to end a tenancy if a tenant breaches a material term of the tenancy agreement and fails to correct the breach "within a reasonable time after the landlord gives written notice to do so".

A tenant can dispute a notice issued under section 40 of the *Act* within 10 days of receiving it pursuant to section 40(4) of the *Act*.

Rule 6.6 of the Rules of Procedure states that a "landlord must prove the reason they wish to end the tenancy" when a tenant disputes a notice to end tenancy.

Policy Guideline 8 addresses material terms in a tenancy agreement. It defines a material term as "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" (para. 6). The Policy Guideline outlines several factors an arbitrator will consider when determining whether a term is a material term including:

- The importance of the term in the overall scheme of the tenancy agreement as opposed to the consequences of a breach (para. 7)
- The facts and circumstances surrounding the creation of the tenancy agreement in question (para. 8)
- The true intention of the parties (para. 8)

The Policy Guideline says that a statement in a tenancy agreement that a term is a material term is not determinative of the issue (para. 8). It further states that the party alleging a term is a material term must present evidence and argument to support their position (para. 7).

Policy Guideline 8 also addresses what a party must do to end a tenancy based on a breach of a material term and states (para. 9):

> …the party alleging a breach…must inform the other party in writing:
>
> - 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.

Further, the Policy Guideline says that it is the party alleging a breach of a material term as the basis for a notice to end tenancy that bears the burden of proof (para. 10).

Based on the testimony of both parties, I find the Tenant received the Notice May 22, 2018. The Tenant filed the Application May 28, 2018, within the 10-day time limit set out in section 40(4) of the *Act*.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice in this application. Further to Policy Guideline 8, the Landlord has the onus to prove the term in question is a material term of the tenancy agreement.

Neither the *Act* nor the *Manufactured Home Park Tenancy Regulation* states that park rules are material terms of all tenancy agreements.

Given the testimony and evidence of the parties, I am not satisfied based on a balance of probabilities that the term in question is a material term of the tenancy agreement. The Tenant did not admit or agree that the term is a material term of the tenancy agreement.

The Representative testified that the tenancy agreement states that the park rules “form part of and are material terms of” the agreement. The Landlord did not submit the

tenancy agreement or park rules as evidence. I do not know what the term in question specifically states nor could the Representative tell me what it specifically states. I cannot confirm that the agreement states the park rules are material terms of the agreement.

In my view, there is no justifiable reason for the Landlord to not submit the tenancy agreement and park rules in an application of this nature. When asked about this, the Representative said it was the Tenant's application and her onus to prove the claim. This is inaccurate.

The Tenant could not confirm what the term in question specifically states or that the tenancy agreement states the park rules are material terms.

Even assuming the tenancy agreement states the park rules are material terms of the agreement, further to Policy Guideline 8, this is not determinative of the issue. I find that I have insufficient evidence before me about the facts and circumstances surrounding the creation of the tenancy agreement and the intention of the parties. The Representative was not present at the time the Tenant entered into the tenancy agreement and could only speak to standard practice in this regard. The Landlord did not call any witnesses that could speak to these issues. The Landlord did not submit any documentation regarding these issues. I did not find the Tenant's testimony useful in determining these issues as the Tenant basically testified that she just signed the agreement.

I also have concerns about the written warning letter as it does not state that the Landlord believes the problem identified is a breach of a material term of the tenancy agreement as required by Policy Guideline 8.

Given the above, the Landlord has not satisfied me that the term in question is a material term of the tenancy agreement or that the tenancy should end based on a breach of this term. Therefore, the Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 24, 2018

Residential Tenancy Branch