Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CEDAR CREEK MHP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act"). The tenant seeks an order cancelling a One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 40 of the Act.

A dispute resolution hearing was convened on January 22, 2019, and the landlord's agent and tenant attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues with respect to the service of documents or evidence.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

I note that section 48(1) of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord's notice to end tenancy complies with the Act.

Issues to be Decided

1. Is the tenant entitled to an order cancelling the Notice?

2. If not, is the landlord entitled to an order of possession?

Background and Evidence

The landlord's agent (hereafter referred to as the "landlord" for brevity) testified that the tenancy commenced in June 2004.

On November 29, 2018, the landlord issued the Notice and served it by posting it on the tenant's door. The Notice, a copy of which was submitted into evidence, stated that the effective end of tenancy date as December 30, 2018, and on page 2 of the Notice the ground for ending the tenancy was 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 details of the cause section of the Notice stated the following: "Unlicensed and to many vehicles. Park Rule [#7 Conduct in the park] No more two vehicles shall be parked on paved areas within the tenants site. Park Rule{ #10 All vehicles must show current vehicle registration & insurance.}

The park rules, an excerpt of which was submitted into evidence, includes the rule that states "All vehicles must show current vehicle registration and insurance." Another rule states that "No more than two vehicles shall be parked on paved areas within the tenant's site except for temporary loading and unloading with management approval."

The landlord testified to the grounds for issuing the Notice, reflecting what was in the Notice. Namely, that the tenant had too many vehicles and that said vehicles were no registered or insured. He stated that the tenant had a trailer and an "old motorcycle" that was not running at all. It has since been removed. There was also a pick-up truck (not on the tenant's site, the landlord noted) on an adjacent site to the tenant's site; it is located on an area that is designated for access to a mechanical box for the park.

On October 22, 2018, the landlord issued a Notice of Infraction, a copy of which was submitted into evidence, that advised the tenant to remove an unlicensed vehicle from the site. The landlord gave the tenant until November 25, 2018, to correct the issue. On November 29, 2018, the landlord issued the Notice.

The tenant referred to an incorrect date on the Notice, noting that it should read November 28 and not November 29. Regarding the vehicles, the tenant testified that there was a commercial truck in a secondary driveway, and that he was told by the park manager back in 2004 that he could park in the secondary driveway. He further testified that the trailer did not come until after the Notice was issued, and that the motorcycle belongs to the next-door neighbour, and that the park manager knows this. He also testified that the truck was not his, though the landlord told him that "it's got to go!"

The tenant also testified that the trailer was licensed and towable. The trailer and the truck were both licensed, and insured, he added.

In his final submissions, the landlord testified that “all the park ever wanted was for the park [residents] to clean their site[s] up.” He noted that he issued five One Month Notices the same day and that all of the par tenants complied with the park’s requests, leading to the Notices being cancelled. He concluded by stating that the tenant has taken away the vehicles, that so far there has not been any further issues, and that “he’s cleaned up his stuff.”

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

In this case, the landlord issued the Notice on the ground that there was a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. I must first turn to the issue of whether the park rules (and breach thereof) on which the Notice is based are material terms.

Residential Tenancy Policy Guideline 8. Unconscionable and Material Terms outlines the approach used in determining whether a term is material, as follows:

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 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. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach must inform the other party in writing of *all* of the following:

- 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.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises because of this action, *the party alleging the breach bears the burden of proof*. A party might not be found in breach of a material term if unaware of the problem.

In this case, while the Notice to end the tenancy stated that the alleged breach was of a material term, the Notice of Infraction did not. Certainly, the Notice of Infraction included the other elements listed above, but the Notice of Infraction did not include a critical piece of information, namely, that the infraction was a breach of a material term. Indeed, one possible infraction is “pet excrement.” Surely a single instance of a dog or a cat defecating would not lead to eviction? But, based on the language of the Notice of Infraction this is a possibility. Similarly, without a clear and unequivocal statement to the effect that failure to correct an alleged infraction is a breach of a material term, a landlord cannot then jump to the next step of ending a tenancy for an alleged breach of a material term.

What is important to note is that the ground as stated in the Notice includes the phrase “not corrected after a reasonable time after written notice to do so.” The amount of time that the landlord gave to the tenant to remove the vehicles is quite reasonable. However, the language contained in a landlord’s written notice must include a reference to the fact that the breach is a breach of a material term.
In this case, the written Notice of Infraction did not include a warning to the tenant that failure to correct an issue would constitute a material breach of the tenancy agreement (that is, the park rules). Further, the landlord did not provide any testimony or evidence establishing that the park rules under which the Notice was issued were material terms.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the ground on which the Notice was issued. As such, the Notice dated November 29, 2018, is cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

That having been said, as the landlord and tenant are now aware of how a landlord may establish a term of a tenancy agreement to be a material term, and the changes that could be implemented in future versions of the landlord's Notice of Infraction, the tenant is cautioned that any future infraction of a park rule *may* give rise to future notices to end tenancy on the grounds of a potential breach of a material term. That "all the park ever wanted was for the park [tenants] to clean their site up" is a laudable goal of any manufactured home park, and I strongly encourage the tenant to collaborate with his landlord in achieving this goal.

Conclusion

The Notice issued November 29, 2018, is hereby cancelled and of no force or effect. The tenancy will continue until it is 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: January 23, 2019

Residential Tenancy Branch