Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 28, 2018 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated November 6, 2018. The Tenant sought more time to file the Application.

The Tenant had filed an amendment to the Application in relation to the Landlord's name. I confirmed the spelling of the Landlord's name during the hearing and this is reflected in the style of cause.

The Tenant appeared at the hearing with the Advocate and Witness. The Witness exited the room until required. The Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed she received the hearing package and Tenant's evidence and raised no issues in this regard.

The Tenant confirmed she received the Landlord's evidence except for five pages of the package. I advised the Tenant of what those five pages contained as I had received them. The Tenant advised that she had previously received these from the Landlord, but not as evidence on the hearing. The Tenant did not take issue with me considering these five pages and given this I have considered them.

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

I note that the Tenant never called the Witness during the hearing. I gave the Tenant ample opportunity to make submissions and point to relevant evidence throughout the hearing. The Tenant never asked to call the Witness in relation to any of the issues discussed. Nor did the Tenant ask to call the Witness at the end of the hearing when the hearing was coming to an end. Therefore, I did not hear evidence from the Witness.

Issues to be Decided

1. Should the Tenant be given more time to file the Application?

2. Should the Notice be cancelled?

3. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

More Time

The Tenant sought more time to file the Application given when it was sent by the Landlord and received by the Tenant.

I heard the parties on this issue.

The Landlord did not object to the Tenant being given more time to file and therefore I allow the Tenant's application in this regard and will consider the dispute of the Notice.

Dispute of the Notice

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord, a co-landlord and the Tenant in relation to the site. The tenancy started December 19, 2016 and is a month-to-month tenancy. Rent is due on the first day of each month. The agreement is signed by the Tenant. The

agreement is not signed on behalf of the landlords; however, there was no issue that the Landlord and co-landlord were the landlords under the agreement.

The Park Rules are attached to the tenancy agreement. The Park Rules state as follows at the top:

> 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*.

The Park Rules include the following:

> C. 1. Any and all additions and alterations to home or attachments thereto must be first approved in writing by Landlord and obtain any building permits from the local authorities as applicable. Save as described in section "C" Additions and Alteration to Lot and Home, there shall be no additions or alterations to Lot by Tenant.
>
> E. 6. Tenant must ensure that his or her use of the Lot and Home complies with all provincial, regional and municipal statutes, regulations and by-laws.

The Park Rules are initialed and signed by the Tenant.

The Notice was submitted as evidence. It is addressed to the Tenant and refers to the rental unit. It is signed and dated November 6, 2018 by the Landlord. It has an effective date of December 31, 2018. The grounds are as follows:

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

    a. seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and

    b. put the Landlord's property at significant risk.

    ("Ground 1")

2. The Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to:

a. damage the landlord's property; and

b. jeopardize a lawful right or interest of another occupant or the landlord.

("Ground 2")

3. The Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the site or park ("Ground 3").

4. The Tenant has not done required repairs of damage to the site ("Ground 4").

5. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so ("Ground 5").

The Tenant did not take issue with the form or content of the Notice.

The Landlord testified that she sent the Notice to the Tenant by registered mail. She agreed with the information on the Canada Post website showing it was sent November 7, 2018. The Tenant agreed she received both pages of the Notice by registered mail on November 23, 2018.

The Tenant filed the Application November 28, 2018.

The main issue raised by the Landlord was in relation to the Tenant having work done on a porch attached to the home without the Landlord's permission and without the proper permits from the Regional District. The Landlord said this issue related to Ground 1, Ground 2, Ground 3 and Ground 5 in the Notice.

The Landlord testified that the Tenant had someone tear the porch off the home. She pointed to the photos provided to her by the Tenant and submitted as evidence to show the state of the porch. The Landlord said the photos show joists have been removed from the structure of the porch. She said the Tenant requires a permit to do this. The Landlord testified that the porch was not built properly to begin with and that there is risk involved in tearing it apart. She said the Tenant needs to obtain a permit from the Regional District whether she is demolishing the porch or rebuilding it. The Landlord testified that the porch must be built to code if being rebuilt.

The Landlord testified that the Tenant sent her photos of the porch and issues in relation to it. This has been submitted as evidence. The Landlord submitted that the photos raise serious concerns. The Landlord said the notes on the photos show that the author of them does not understand the building code. The Landlord said she could not agree to the proposal shown in the Tenant's photos.

The Landlord testified that the Regional District has issued two warnings in relation to the work being done on the Tenant's home. These were submitted as evidence. I understood the Landlord to say that, if the Tenant does not obtain permits for the work being done on the home, a notice may be put on title for the property which would require the Landlord to address the issue.

The Landlord referred to correspondence submitted between her and the Tenant in which the Landlord explained the permit requirement to the Tenant and explained to the Tenant why the photos submitted to the Landlord are not sufficient to obtain approval for the proposed work. The Landlord said she told the Tenant she had to provide proper drawings of the proposed work. The Landlord testified that she never received proper drawings.

The Landlord pointed to the notices issued by the Regional District in relation to the requirement for proper drawings. The notices state "To apply for a building permit, completed [sic] included application with two copies of approved construction drawings to our office…Failure to comply may result in legal action".

The Tenant testified that she is not tearing the porch off or altering it. She said she is having the roof fixed due to a leak. The Tenant testified that when she got the stop work order from the Regional District she asked the District what to do and they advised she needed permission from the Landlord in relation to the work. The Tenant testified that she sent the Landlord drawings but the Landlord said they were not sufficient. The Tenant said the Landlord will not give her permission to get a permit.

At first, the Tenant said she did not know if she needed a permit for the work done on the home. The Tenant then agreed she needs permits for the work being done. The Tenant later said she is not sure if she required a permit to do the work.

The Tenant did not point to any evidence to show that the photos she sent to the Landlord are sufficient to obtain the Landlord's approval. The Tenant said she did not know if the photos are sufficient. The Tenant disputed that she has not provided the

Landlord with sufficient documentation to obtain approval; however, she could not point to any evidence to support this position.

I asked the Tenant why she has not obtained a permit for the work being done. The Tenant testified that she needs to hire a professional carpenter which she cannot afford. She said she cannot afford to get the proper drawings done. The Tenant also said the Landlord will not give her the necessary permissions. The Tenant took the position that she had done what she was supposed to in relation to getting the Landlord's permission so she can get a permit. The Tenant could not point to any evidence to support her position.

The Advocate said this issue started because of a leaky roof and that the repair was going to be a roof repair. The Tenant agreed that joists have been removed from the porch and said this was because the roof was leaking.

The parties submitted correspondence between the Landlord and Tenant in which the Landlord asks the Tenant to send her proper drawings to approve for the permit. The correspondence indicates it is in relation to violations of the tenancy agreement and states that failure to meet the deadlines will result in an eviction notice.

The Tenant submitted a witness statement from the Witness. She raises questions about why the Landlord did not have the porch removed prior to the trailer being sold if it is not up to code. The remaining points are not relevant.

The photos provided to the Landlord by the Tenant and submitted as evidence refer to "mobile home porch repairs" and then in brackets states "roof, walls, floor, windows, etc."

The Landlord submitted a copy of an Application For Building Permit from the relevant village and sheet called How To Obtain a Building Permit from the relevant Regional District.

The Landlord sought an Order of Possession effective April 1, 2018.

Analysis

The Landlord was entitled to issue the Notice based on the grounds listed pursuant to section 40 of the *Manufactured Home Park Tenancy Act* (the "*Act*").

A notice to end tenancy under section 40 of the *Act* must be served on the tenant in accordance with section 81 of the *Act*. The notice must comply in form and content with section 45 of the *Act*.

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Based on the testimony of both parties, I find the Notice was served on the Tenant in accordance with section 81(c) of the *Act*. I accept the testimony of the Tenant that she received the Notice November 23, 2018 as this is what the Canada Post website shows.

The Tenant had 10 days to dispute the Notice pursuant to section 40(4) of the *Act*. The Tenant disputed the Notice November 28, 2018. Under section 83 of the *Act*, the Tenant was deemed to have received the Notice November 12, 2018 and therefore was out of time to dispute the Notice on November 28, 2018. However, the Landlord agreed to me hearing the dispute and therefore I have considered the grounds for the Notice.

I have reviewed the Notice and find it complies with section 45 of the *Act* in form and content as required by section 40(3) of the *Act*.

Section 40(1)(g) of the *Act* states:

> 40 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> (g) the tenant
>
> (i) has failed to comply with a material term, and
>
> (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Policy Guideline 8 addresses material terms in a tenancy agreement and states:

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…

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. 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 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:

- 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.

… A party might not be found in breach of a material term if unaware of the problem.

I find that the Park Rules have been incorporated into the tenancy agreement in term 17 and term 33 which states that the Park Rules are material terms of the tenancy agreement. Further, the Park Rules themselves indicate that any breach of them 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 *Act* and *Manufactured Home Park Tenancy Regulation*. I find that term C. 1. and term E. 6. of the Park Rules are material terms of the tenancy agreement given term 33 of the tenancy agreement and the statement included in the Park Rules about a breach being treated as a breach of a material term of the tenancy agreement. The Tenant signed the tenancy agreement

and initialed and signed the Park Rules. I also accept, given the nature of the terms and issues they address, that term C. 1. and term E. 6. of the Park Rules are important terms of the tenancy agreement. I am satisfied that they are material terms.

I accept that the Tenant has breached these terms. The proposal sent by the Tenant to the Landlord in relation to the porch repairs suggests repairs are being made to the roof, walls, floor and windows. The Tenant acknowledged that a worker had attended and removed joists from the porch structure. I am satisfied the Tenant is making alterations to the home or attachments thereto. I also find that the notices from the Regional District support this view as the Regional District clearly views the work started as requiring a permit. Pursuant to term C. 1. of the Park Rules, the Tenant was required to obtain the Landlord's written approval and obtain the necessary building permits prior to starting the alterations. There was no issue that the Tenant did not obtain the Landlord's approval prior to starting the work as she still does not have the Landlord's approval. There was also no issue that the Tenant did not have a building permit to do the work.

Further, I am satisfied based on the notices issued by the Regional District that the Tenant has failed to comply with the bylaw noted in the notices and therefore breached term E. 6. of the Park Rules.

I find that the Landlord has given the Tenant sufficient notice of these breaches. The correspondence submitted shows the Landlord sent the Tenant correspondence on September 4, 2018, September 18, 2018, October 5, 2018 and October 28, 2018 in relation to the porch and building permit issue. The correspondence refers to the stop work orders from the Regional District. The correspondence states that the Tenant has violated local government regulations which can lead to eviction. The correspondence from September 18th, October 5th and October 28th provide the Tenant with deadlines for acting on this issue. The correspondence refers to the issue being a violation of the tenancy agreement.

I find it would have been clear to the Tenant that terms C. 1. and E. 6. of the Park Rules were being violated given the clear wording of the terms and outline of the issues in the Landlord's correspondence. I find that it is clear from the tenancy agreement and Park Rules that the Park Rules are material terms of the tenancy agreement. I am satisfied that the Tenant was given ample warning in relation to the breaches.
As of November 6, 2018, the date the Notice was issued, the Tenant had not complied with the requests of the Landlord in relation to providing proper drawings or doing what

was necessary to obtain permits. This is two months after the first correspondence was sent to the Tenant in relation to this issue.

I note that I accept that the photos provided by the Tenant to the Landlord are not sufficient given the notation in the notices from the Regional District that they require "two copies of approved construction drawings".

I acknowledge that the Tenant submitted that she cannot afford to provide the proper drawings to the Landlord. However, the Tenant signed the tenancy agreement and agreed to be bound by the Park Rules. Further, the Tenant signed the Park Rules which state they are material terms. The Tenant therefore must comply with the Park Rules, regardless of her financial situation. The Tenant failed to do so by failing to obtain the Landlord's approval and a permit prior to having someone start work on the porch.

I am satisfied that the Tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time after the Landlord gave written notice to do so. I find the Landlord has proven Ground 5 in the Notice on a balance of probabilities. I do not find it necessary to decide whether the Landlord has proven the remaining grounds. I uphold the Notice and dismiss the Application.

Pursuant to section 48(1) of the *Act*, I grant the Landlord an Order of Possession. The Landlord asked that the Order of Possession be effective April 1, 2019 which is past the effective date of the Notice. I grant the Landlord an Order of Possession for 1:00 p.m. on April 1, 2019.

Conclusion

The Notice is upheld. The Application is dismissed.

The Landlord is granted an Order of Possession effective at 1:00 p.m. on April 1, 2019. This Order must be served on the Tenant. If the Tenant does not comply with this Order, it may be filed in the Supreme Court and enforced as an order of that court.

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 15, 2019

Residential Tenancy Branch