



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's 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 (1 Month Notice) pursuant to section 40; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 82 of the *Act*, I find that the landlord was duly served with the tenant's application. All parties confirmed receipt of each other's evidentiary materials.

The tenant confirmed receipt of that the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) dated November 31, 2018 (corrected to November 30, 2018), which was personally served to her on December 1, 2018. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 81 of the *Act*.

Preliminary Issue: Adjournment of Hearing

At the outset, the tenant made an application requesting an adjournment as the tenant wanted more time to discuss the matter with her advocate. The landlord opposed the application for an adjournment stating that the matter had been outstanding for some time, and despite the fact that this latest 1 Month Notice was issued in November of 2018, the issues for why the landlord is requesting an Order of Possession have been outstanding for some time. The landlord testified that the tenant had ample opportunity

to prepare for this hearing, and an adjournment would be extremely prejudicial to him. The landlord felt that the adjournment request was a further delay tactic by the tenant to extend this tenancy.

In deciding whether the tenant's adjournment application would be granted, I considered the following criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

While I am sympathetic to the tenant's situation, I find that the tenant failed to establish how this adjournment request was due to issues beyond her control. I find that the tenant had over 2 months to prepare for this hearing, and the tenant has failed to establish why her advocate was unable to attend this scheduled hearing by telephone. I am not satisfied that the adjournment request was not due to the intentional actions or neglect of the tenant. I also took in consideration that this matter pertains to a Notice to End Tenancy for Cause, and I find the landlord would be significantly prejudiced by a delay in this matter by adjourning the hearing and delaying this matter.

The request for an adjournment was not granted. The hearing proceeded.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on October 1, 2017, with monthly pad rental currently set at \$500.00, payable on the first of each month. No written tenancy agreement exists for this tenancy, and it was decided at a previous hearing by the Arbitrator that a tenancy exists, and that the *Act* applies to this tenancy.

The landlord served the tenant with a 1 Month Notice to End Tenancy on December 1, 2018 providing three grounds:

1. The 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;
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so; and
3. The tenant knowingly gives false information about the manufactured home park to a prospective tenant or purchaser viewing the manufactured home park.

The landlord is seeking the end of this tenancy as the landlord feels the tenant has failed to maintain the cleanliness of the site. The landlord testified that the tenant was previously issued a 1 Month Notice, which was cancelled at the last hearing in October of 2018. Since that time, the tenant has failed to address the matter despite receiving written warning from the landlord to do so. The landlord testified that the amount of items has increased, and has crossed into the boundaries of her neighbour's property. The landlord testified that the tenant has had ample opportunity to address the matter, and is aware that her behaviour could mean the end of this tenancy.

The landlord expressed concern about the tenant's blatant refusal to clean up her belongings and the ongoing accumulation of items on the property, which the landlord feels will attract more rats and damage the property. The landlord testified that he has a duty to maintain the cleanliness of the property, and well as perform required repairs, and the tenant's refusal to clean up her belongings has prevented him from being able to fulfil his obligations.

The tenant admitted to storing the items on the property, but due to the weather and a bad back, she has had difficulty cleaning up the items without assistance. The tenant testified that the rat problem cannot be attributed to her actions, and that she needed more time to sell her belongings as she felt that she should not "have to give away" her belongings. The tenant testified that she had asked the landlord to accommodate a yard sale, which he refuses.

The tenant also feels that the landlord has been unclear and inconsistent with his expectations of herself and other tenants. The tenant testified that she was not clear

about the boundary lines, and that her belongings cannot be seen from the roadway. The tenant feels that the landlord has been prejudicial with how he addresses issues with each tenant, and she feels that the landlord is particularly biased against her as she had less to offer than the other tenants. The tenant feels that this second 1 Month Notice was issued for the same reason as the one cancelled in October, where the Arbitrator found that there was insufficient evidence to support that the tenant had breached a material term of the tenancy agreement.

The tenant also feels that she has not "knowingly gives false information about the manufactured home park to a prospective tenant or purchaser viewing the manufactured home park".

Analysis

Section 40 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may dispute the 1 Month Notice by filing an application for dispute resolution within ten days after the date the tenant receives the notice. The landlord served the tenant with the 1 Month Notice on December 1, 2018, and the tenant filed her application on December 10, 2018. As the tenant filed her application within the time limit under the *Act*, the onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

While the landlord indicated on the 1 Month Notice that the tenant had knowingly given false information about the manufactured home park to a prospective tenant or purchaser viewing the park or site, I find that the landlord had provided insufficient evidence to support this. Accordingly I find that the landlord has not justified the end of this tenancy on this basis.

The landlord, again, alleged that the tenant breached a material term of the tenancy agreement, which was the basis for why the landlord had previously issued the tenant a 1 Month Notice on August 1, 2018.

In the Arbitrator's decision dated October 19, 2018, the Arbitrator made the following findings:

"Policy Guideline #8 provides assistance when determining whether or not a term in a tenancy agreement is a material term. It 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. 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 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.*

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 as a result 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.

[Reproduced as written.]

After considering the above, I find there was no written tenancy agreement between the parties to assist in determining whether or not the behaviours alleged by the Landlord, if

true, amounted to breaches of material terms of the agreement between the parties. In any event, even if there was a breach of a material term, I find there is insufficient evidence before me to conclude the Tenant was provided with written notice of an alleged breach and was given a reasonable amount of time to fix the breach.”

Although the landlord did provide written notice to the tenant following the hearing about her breach, I find that in the absence of a written tenancy agreement, I cannot make a determination about whether the tenant’s actions could be considered a breach of a material term of the tenancy agreement, and how material this term is to the tenancy agreement as a whole. On this basis, I find that the landlord has not met the burden of proof to demonstrate that this tenancy should end on the grounds of the tenant’s breach of a material term of the tenancy agreement.

Lastly, the landlord cited the following grounds for why the tenancy should end: “The 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”.

Section 26 of the *Act* addresses the obligations of both the landlord and tenant to maintain a property, including the need to comply with housing, health, and safety standards as required by law.

Landlord and tenant obligations to repair and maintain

26 (1) *A landlord must*

(a) provide and maintain the manufactured home park in a reasonable state of repair, and

(b) comply with housing, health and safety standards required by law.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas.

(3) A tenant must repair damage to the manufactured home site or common areas that is caused by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord is not required to maintain or repair improvements made to a manufactured home site by a tenant occupying the site, or the assignee of the tenant, unless the obligation to do so is a term of their tenancy agreement.

(6) A landlord's obligations under subsection (1) (b) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I have considered the fact that the tenant's belongings could possibly jeopardize the health or safety of other occupants, the landlord, and the landlord's property. I accept the fact that the tenant has failed to address this issue in a timely manner, and the landlord has expressed concern about his duty to maintain the property as he is required to by section 26 of the *Act*. Although the landlord testified that the tenant has crossed the property line with her belongings, the tenant testified that these boundaries are unclear. I find that the landlord has not provided sufficient evidence to support that the tenant has seriously jeopardized the legal right of another occupant or the landlord.

The landlord also expressed concern about the health and safety of the accumulation of the items on this property, particularly the attraction of rats to the property. Although it was undisputed that there may be a rat problem on the property, I find that the landlord has not provided sufficient evidence, such as an official report, or witness testimony, to support that the rats are due to the tenant's actions, or that the tenant's actions have jeopardized the health and safety of the landlord or other occupants.

As the burden of proof is on the landlord to support his claims, I find that the landlord did not provide sufficient evidence to demonstrate how the tenant's behaviour is significant enough to justify ending this tenancy on the grounds provided on the 1 Month Notice.

For the reasons outlined above, I find that the landlord has not satisfied me that he had grounds for ending this tenancy on the grounds that were provided on the 1 Month Notice. Accordingly, I allow the tenant's application to cancel the 1 Month Notice, and this tenancy is to continue as per the *Act*.

The tenant also made an application for the landlord to comply with the *Act* and tenancy agreement. I find that that the tenant did not provide sufficient evidence to support how the landlord has failed to comply with the *Act* and tenancy agreement, and accordingly, this portion of the tenant's application is dismissed with leave to reapply.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The 1 Month Notice, dated November 31, 2018, is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant's application for the landlord to comply with the Act is dismissed with leave to reapply.

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: January 24, 2019

Residential Tenancy Branch