



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, MNDC, OLC

Introduction

This hearing was scheduled to deal with a tenant's application for cancellation of a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"); to dispute an additional rent increase; monetary compensation to recover payment of water not supplied; and, orders for the landlord to comply with the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The tenants withdrew their request for orders for compliance. I dismissed this remedy with leave to reapply.

The style of cause was amended to reflect the correct spelling of the landlord's name.

Issue(s) to be Decided

1. Should the 1 Month Notice be upheld or cancelled?
2. Have the tenants paid rent an unlawful rent increase?
3. Are the tenants entitled to recovery of payment for city water they did not receive?

Background and Evidence

The parties had executed a number of fixed term tenancy agreements with the most recent agreement starting October 1, 2017 with an expiry date of May 31, 2018. The tenancy agreement provides that the tenants would vacate the rental site at the end of the fixed term; however, with the change in legislation that took effect in December 2017 the tenancy continued on a month to month basis upon expiry of the fixed term.

The tenancy agreement provides that the tenants must pay rent of \$375.00 on the first day of every month.

1 Month Notice to End Tenancy for Cause

Both parties submitted an identical copy of a 1 Month Notice to End Tenancy for Cause that is dated February 1, 2019 and has a stated effective date of April 15, 2019. I confirmed with both parties that the copy served upon the tenants was not signed by the landlord and did not include the name of the landlord issuing the 1 Month Notice. I also confirmed the reasons that appear on the second page of the 1 Month Notice.

The landlord testified that he served the 1 Month Notice by placing it in the front door jamb on February 28, 2019. The landlord subsequently changed his testimony to say it was placed in the door jamb on January 30, 2019.

The tenant testified that in the morning of March 4, 2019 she opened the door to let the dog out and the subject 1 Month Notice flew out and landed on the dog's back which enabled her to catch it. The tenants were of the position the 1 Month Notice could not have been placed there any earlier than the evening of March 3, 2019 since the front door is their ordinary means of coming and going from their manufactured home.

I noted that one of the reasons the landlords had indicated on the 1 Month Notice for ending the tenancy was "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

In the details of cause the landlords wrote several reasons for ending the tenancy:

DETAILS OF CAUSE(S): Include any dates, times, people or other information that says who, what, where and when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).
1- Tenant has installed a non approved wood burning heater that is a serious fire hazzard place herself and other tenants at risk. 2- Has not provide proof of liability insurancew as required in the lease. 3- Has installed a roof structure without permits and of a sub standard quality and apperance that presents a colapse hazzard. 4- Tenat has a large dog and a cat without park approval

During the hearing, I asked the landlord to identify the "material term(s)" the tenants have breached and not corrected after giving them written notice to do so. The landlord testified that it is the construction of a structure on the site; that he gave the tenants a breach letter on December 3, 2018 with a 30 day deadline to correct the breach.

The tenants testified that they were unaware the construction of a tin snow roof is the material term the landlord alleges they have breached and they were unfamiliar with a letter dated December 3, 2018.

During the hearing, I gave the parties my oral finding that the 1 Month Notice before me was not enforceable due improper service; the lack of a signature of the landlord; and, the material term the landlord identified during the hearing was not sufficiently identified as such, along with reference to the breach letter, in the details of cause on the 1 Month Notice.

The landlord did not have any objection to cancellation of the Notice. I informed the parties that the landlords remain at liberty to issue another 1 month Notice since I was cancelling this Notice based on the content of the Notice and insufficient service and not the merits of the case for eviction. The tenants were informed that they retain the right to dispute any Notice to End Tenancy served upon them by filing an Application for Dispute Resolution. Both parties indicated they understood this.

Unlawful rent increase

The tenants testified that they have been paying \$375.00 per month as required under their most recent tenancy agreement but questioned whether the amount was lawful since it was greater than the rent due under their previous rental agreements.

I provided the parties with my oral finding that paying rent in the amount stipulated in the written and duly executed tenancy agreement is not a violation of the Act or the tenancy agreement and I do not find the tenants have overpaid their rent or paid an unlawful rent increase. As I informed the parties, entering in to a new tenancy agreement replaces the former tenancy agreement and the parties may renegotiate new terms in different terms in a new tenancy agreement. Now that the vacate clause is not enforceable due to the changes in legislation that took effect in December 2017 and the tenancy is on a month to month basis the tenants are not obligated to enter into a new tenancy agreement. So long as the current tenancy agreement remains in effect, to increase the rent the landlord will have to give the tenants a *Notice of Rent Increase* in the approved form, with three full months of advance notice, and for an amount that does not exceed that calculated under the *Manufactured Home Park Regulations*. The tenants indicated they understood this now and withdrew their complaint that they had paid an unlawful rent increase.

Recovery of amounts paid for city water

The tenancy agreement provides that water was not included in the monthly rent payment; however, the tenants had been provided well water at no charge through to March 2019 when the park switched over to city water that the tenants agreed to pay \$30.00 per month to the landlord for the supply of city water.

I heard that the city water supply commenced approximately 7 days ago. The landlord stated that tenants were not required to pay for the city water until April 1, 2019.

The tenants stated they have paid the \$30.00 to the landlord for the past three months. The landlord stated that he was unaware of that since he does not see the deposits made by the tenant but that if the tenants provide him evidence of payments for city water for months prior to April 2019 the landlord will refund those payments to the tenants. The tenants indicated they would get the evidence from their bank and present it to the landlord.

The parties considered this issue resolved by way of recording the landlord's agreement above; however, if the landlord does not refund their payments of \$30.00 made prior to the month of April 2019 the tenants may make another Application for Dispute Resolution to pursue the matter further.

Analysis

The tenants found a 1 Month Notice to End Tenancy for Cause on March 4, 2019 and filed to dispute it. Below, I provide my analysis, findings and reasons with respect to the enforceability of the subject 1 Month Notice.

Section 40 of the Act provides for issuance of a 1 Month Notice to End Tenancy for Cause. Section 40(3) provides:

(3) A notice under this section must comply with section 45 [*form and content of notice to end tenancy*].

[My emphasis underlined]

Section 45 provides for the form and content of a notice to end tenancy:

45 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the manufactured home site,
- (c) state the effective date of the notice,
- (d) except for a notice under section 38 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

[My emphasis underlined]

A landlord must give a Notice to End Tenancy to the tenant in one of the ways required under section 81 of the Act. Section 81 provides:

81 All documents, other than those referred to in section 82 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

- (g) by **attaching a copy to a door or other conspicuous place** at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 64 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

[My emphasis bolded and underlined]

The landlord put the 1 Month Notice in the door jamb of the tenant's manufactured home. Section 81(g) requires a document to be attached to the door or other conspicuous place. I find the placement in the door jamb insufficient service since it is not attached may result in the document falling or blowing away and not received by the tenant.

In this case, the parties provided different dates as to when the 1 Month Notice was left in the door jamb. However, I find it unnecessary for me to determine which date it was left as I find it was not sufficiently served in a manner required under section 81 of the Act and it is otherwise invalid and unenforceable because it was not signed by the landlord.

Further, the landlord is required to give a detailed description of the cause for ending the tenancy in the space provided on the 1 Month Notice and I find the landlord did not sufficiently identify the term in the tenancy agreement the landlord considered to be material and breached by the tenants despite giving them written notice to do so. I would have expected to see more explicit reference to the landlord's reason (construction of an unpermitted structure) as being a breach of a material term of the tenancy agreement, reference to the specific term in the tenancy agreement that prohibits this, and reference to the breach letter issued including the date it was served to the tenants and the deadline for compliance.

In light of the above, I grant the tenant's request for cancellation of the 1 Month Notice and the tenancy continues at this time.

Since I have cancelled the 1 Month Notice based on the content of the Notice and I made no findings as to whether there is sufficient cause for ending the tenancy, the

landlord remains at liberty to issue another Notice to End Tenancy to the tenants and the tenants would have the right to dispute any such Notice to End Tenancy given to them by filing an Application for Dispute Resolution. However, I encourage the parties to try to work together to resolve their issues before issuing another Notice to End Tenancy.

With respect to the payments toward city water, I have recorded by way of this decision the landlord's agreement to refund any payments made by the tenants for city water before the rental month of April 2019 upon receiving documentary evidence of any such payment(s) by the tenants. The tenants indicated they will get evidence from their bank and present it to the landlord. The parties appeared satisfied with the outcome of this approach and I consider the matter resolved at this time. However, should the parties remain in dispute concerning payment for water, the tenants may make another Application for Dispute Resolution to seek further remedy.

Conclusion

The 1 Month Notice dated February 1, 2019 is cancelled and the tenancy continues at this time. I have cancelled the Notice because it does not meet the content requirements under the Act and because it was not sufficiently served. As such, I did not hear the merits of the case with respect to the reasons for ending the tenancy and the landlord remains at liberty to issue another Notice to End Tenancy to the tenants as appropriate.

The parties reached an agreement with respect to the refunding overpayment of monies toward the city water supply, if any, that I have recorded by way of this decision. I consider this matter resolved at this time; however, if the issue remains in dispute the tenants may make another application for Dispute Resolution.

The tenants withdrew their complaint with respect to paying an unlawful rent increase. Having found the tenants have been paying rent in the amount stipulated in their tenancy agreement I dismiss this issue without leave to reapply.

The tenants request for orders for compliance was withdrawn during the hearing without prejudice and the tenants may make another Application for Dispute Resolution to seek orders for compliance in the future if they so choose.

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: April 05, 2019

Residential Tenancy Branch