Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HYGGE HOLDINGS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was originally convened on June 06, 2019 and was adjourned in an Interim Decision to July 22, 2019 due to service issues.

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 40; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 65.

Counsel for the tenants submitted that the landlord was re-served the tenant's application for dispute resolution and evidence package on June 11, 2019, in accordance with the June 06, 2019 Interim Decision, via registered mail. The landlord did not recall on what date he received the tenant's application but confirmed that he did receive it. I find that the landlord was served with the tenant's application for dispute resolution and evidence package in accordance with section 89 of the *Act.*

The landlord argued that the tenant's application for dispute resolution should have been thrown out because he did not receive the tenant's original application for dispute resolution.

In the previous hearing counsel M.P. for the tenant provided the address the original application for dispute resolution was mailed to via registered mail. The landlord testified that this mailing address was incorrect. Counsel M.P. submitted that the original application for dispute resolution was sent to the address stated as the landlord's mailing address on the One Notice to End Tenancy for Cause with an effective date of

July 1, 2019 (the "One Month Notice"). One Month Notice was entered into evidence for this hearing.

The landlord's address for service stated on the One Month Notice is the same address the original application for dispute resolution was served to. I find that the landlord's error regarding his own address for service on the One Month Notice is the cause of the delay in these proceedings. I find that the landlord is not entitled to rely on his own error to have the tenant's application dismissed.

Preliminary Issue- Amendment

In the tenants' application for dispute resolution, the tenants' unit number was not included in the address for the subject rental property.

Pursuant to section 57 of the *Act,* I amend the tenants' application for dispute resolution to contain the tenants' unit number.

Issues to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 40 of the *Act?*
2. Are the tenants enititled to recover the filing fee for this application from the landlord, pursuant to section 65 of the *Act?*

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agree that monthly rent in the amount of $749.00 is payable on the first day of each month.

Both parties agree that on April 12, 2019 the landlord personally served the tenant with the One Month Notice.

The One Month Notice states the following reasons for ending the tenancy:

- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord testified that on April 12, 2019 he received a complaint from a neighbour about the tenants planning a garage sale. The landlord testified that he called the tenants later that day and told them that hosting a garage sale was against park rules. The landlord testified that the tenants made it clear to him over the phone that they were not going to cancel the garage sale so he served them with the One Month Notice on the evening of April 12, 2019.

Counsel for the tenants submitted the following. After the telephone call between the tenants and the landlord on April 12, 2019 the tenants removed the advertisement for the garage sale that was attached to a telephone pole. After the tenants received the One Month Notice, they put up a notice on the community website they had originally advertised the garage sale, stating that the garage sale was cancelled.

Both parties agree that the tenants did not have a garage sale at the subject rental property.

Both parties agree that the landlord did not provide the tenants with written notice that holding a garage sale was a breach of a material term of the tenancy agreement.

The landlord testified that the tenants breached section L (#3-4) of the Manufactured Home Park Rules by planning on holding a garage sale. Section L #3-4 of the Manufacture Homes Park Rules (the “Park Rules”) states:

3. Management reserves the right to elect without notice any employee, guest or sub-tenant of the manufactured home owner or occupant who is the opinion of Management is objectionable, creating a disturbance or nuisance. In addition, any tenant’s children, employees, guests, sub tenants or pet continues to cause damage, disturbance or nuisance may be given written notice of eviction. The quiet enjoyment of all residents within the park must be taken into consideration.
4. The manufactured home owner or occupant shall not permit the site to be used for any business purpose or purpose illegal, immoral or improper in nature or permit therein person s of whom the Management may object or who may disturb other residents in the park.

Counsel for the tenants submitted that the landlord purchased the Manufactured Home Park in 2015, approximately 9 years after the tenant's moved in. Counsel for the tenants submitted that the Park Rules were originally provided to the tenants in 2016 and that the tenants refused to sign them. The unsigned Manufactured Home Park Rules were entered into evidence. The landlord did not refute the above submissions.

Counsel for the tenants submitted that since the tenants did not sign the Park Rules they are not required to abide by them. Counsel for the landlord submitted that advertising for a garage sale does not breach section L #3-4 of the Park Rules.

Counsel for the tenants submitted that the landlord did not comply with section 40 of the *Act* because he did not provide the tenant's with written notice that the landlord considered holding a garage sale a material term and the landlord did not provide the tenants with a reasonable period of time to correct the alleged breach.

Counsel for the tenants submitted that since the tenants did not hold a garage sale, they did not breach the Park Rules.

Analysis

I find that the One Month Notice was served on the tenants in accordance with section 88 of the *Act.*

The One Month Notice states the incorrect unit number. Section Section 61(1) of the *Act* states that if a notice to end a tenancy does not comply with section 45 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that

> (a)the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
>
> (b)in the circumstances, it is reasonable to amend the notice.

I find that the tenants knew or ought to have known their correct unit number. Therefore, in the circumstances, I find that it is reasonable to amend the One Month Notice to include the correct unit number.

Section 40(1)(g) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if 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.

Residential Tenancy Branch Policy Guideline #8 states that 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.

Based on the testimony of both parties, I find that the landlord did not provide the tenants with written notice of the landlord's belief that holding a garage sale breached a material term of the tenancy agreement. I also find that the landlord provided the tenants with little to no opportunity to correct the alleged material breach.

Since the landlord has not met the requirements to evict the tenants under section 40(1)(g) of the *Act,* I cancel the One Month Notice and find that it is of no force or effect. As I have cancelled the One Month Notice under section 40(1)(g) of the *Act*, I decline to consider Counsel for the tenants' other arguments as to whey the One Month Notice should be cancelled.

As the tenant was successful in her application, I find that she is entitled to recover the $100.00 filing fee from the landlord, in accordance with section 65 of the *Act.*

Section 65(2) states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct $100.00, on one occasion, from rent due to the landlord.

Conclusion

The One Month Notice is cancelled and of no force or effect.

The tenant is entitled to deduct $100.00, on one occasion, from rent due to the landlord, pursuant to section 65(2) of 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 *Manufactured Home Park Tenancy Act*.

Dated: July 22, 2019

Residential Tenancy Branch