Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OAKDALE MOBILE HOME LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT, OLC, OT, PSF, RR, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Manufactured Home Park Tenancy Act* (the "*Act*") to cancel a One Month Notice to End Tenancy for Cause (the "One Month Notice"), for an extension of time to dispute the One Month Notice, for an order for the Landlord to comply with the *Act, Regulation* and/or tenancy agreement, for "other" issues, for services or facilities to be provided, for a reduction in rent, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and legal counsel (the "Tenant") were present for the teleconference hearing as were two agents for the Landlord (the "Landlord"). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant's evidence. The Tenant confirmed receipt of a copy of the Landlord's evidence. Neither party brought up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Preliminary Matters

As stated by rule 2.3 of the *Residential Tenancy Branch Rules of Procedure,* claims on an application must be related to each other and unrelated claims may be dismissed. Due to the urgent nature of a dispute over a notice to end tenancy, the parties were informed that the hearing would proceed on the Tenant's application to cancel the One Month Notice. As the remaining claims were determined to be unrelated, I exercise my

discretion to dismiss the Tenant's additional claims, with leave to reapply. However, this hearing will also address the Tenant's request for the recovery of the filing fee.

Although the Tenant's claim for an extension of time to dispute the One Month Notice is related to the application to cancel the One Month Notice, legal counsel for the Landlord confirmed during the hearing that the Tenant applied on time and therefore this claim was applied for in error. As such, pursuant to Section 57(3)(c) of the *Act,* I amend the Application for Dispute Resolution to remove the claim seeking an extension of time.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy started approximately 35 years ago, and the current owners became the Landlord in 1989. Current monthly rent is $482.55. A notice of rent increase was submitted in the Landlord's evidence which confirms the current rent amount that was effective as of January 2019.

The Landlord testified that they served the Tenant with the One Month Notice on June 28, 2019 by posting the notice on the Tenant's door. A copy of the One Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

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

Further details were provided on the One Month Notice as follows:

> *[The Tenant] was asked to clean up his yard and has not complied. Neighbors have complained repeatedly. The mess draws rodents and is a fire hazard to himself and his neighbors. Photos and letters to [the Tenant] have previously been sent to the Residential Tenancy Board.*

The Landlord provided testimony regarding a pile of possessions in the Tenant's rental site/yard that could be considered "junk". The Landlord submitted multiple photos of the property that they stated were taken April 29, 2019. The Landlord noted that the Tenant has removed some of the items but there were still items present as of the morning of the hearing.

The Landlord stated that previous managers and current management have spoke to the Tenant about this issue for many years although at first it was often verbal. The Landlord submitted letters to the Tenant regarding multiple vehicles on the property as well as concerns with the items in the yard dated May 2, 1991, June 15, 2015, February 25, 2019. May 17, 2019, May 27, 2019 and June 14, 2019.

The Landlord stated that the condition of the Tenant's yard and failure to clean up is a violation of the park rules of which they submitted a copy. They also noted that they provided a copy of the current park rules to the Tenant in February 2019. The rules were also referenced in the letter to the Tenant dated February 15, 2019.

The park rules referenced include a rule that only two vehicles are allowed per site (insured and in running order), that no RVs, boats or trailers can be stored on site without permission of management, and that "tenants are responsible for keeping their site mowed, watered, and clean and tidy at all times". The letter dated February 15, 2019 provided the Tenant until May 15, 2019 for the items to be removed.

The Landlord stated their concern with the condition of the Tenant's site including that due to the number of items the Tenant cannot mow his yard or deal with weeds. They also noted that it is a fire hazard as fire crews would not be able to get through the yard and that there is concern for the presence of rodents which have been seen by neighbours. The Landlord also stated that the yard is unsightly, and they have had many complaints by neighbours. The Landlord submitted that the Tenant has many vehicles on the property including a camper, pick-up truck, and boat with trailer.

The Landlord submitted a copy of the ‘Registration and Lease Agreement’ which was signed and dated September 27, 1990. They stated that the Tenant signed agreeing that the tenancy could be terminated should the park rules not be followed, as written in the agreement.

The Tenant (as submitted by legal counsel on behalf of the Tenant) referenced a statutory deflation submitted in the Tenant’s evidence which provides an outline of events and supporting documents. The Tenant submitted a copy of the original tenancy agreement and stated that the park rules and regulations are different now than they were in 1990.

The Landlord responded that the park rules can be changed as long as a copy is provided to the Tenant, which was done.

The Tenant made submissions regarding the health issues of his spouse and himself that has made it difficult to clean up the yard. However, the Tenant noted that they have recently paid a student to help tidy up. The Tenant submitted photos that they stated were taken July 16, 2019 which show the number of items that have been tidied up from the process.

The Tenant noted that although this is a work in progress, there has been a significant amount of work completed since April 2019. The Tenant stated that although there are sometimes garbage bags on the property, these are items that are in the process of being disposed of as they work through cleaning up the yard.

The Tenant also stated that there are no more additional vehicles such as RVs, boaters or trailers on the property so therefore this is no longer an issue.

The Tenant submitted that this issue is not a material term of the tenancy as indicated on the One Month Notice and referenced information regarding a material term as stated in the policy guidelines. The Tenant further stated that the letters provided to the Tenant, beginning in 1991, then again in 2015 and 2019 do not state that the tenancy will end if the Tenant does not tidy the yard.

Instead, the Tenant noted that the letters indicate that if the belongings are not cleaned up then the Landlord will do so and charge the Tenant for the removal of the items. The Tenant stated that the first time eviction was mentioned was through the receipt of the One Month Notice.

The Landlord was in agreement that some steps have been taken to clean up the yard, although noted that there are still many items pushed to the back of the property. They stated that this still poses a safety concern due to blocking access for emergency personnel. They also noted that there is still a pile of items on the driveway, which the Tenant stated he is in the process of removing from the property.

The Landlord stated that they have been trying to deal with this issue for many years and have been more than patient with the Tenant in attempting to get it sorted out.

The Tenant stated that there have been periods of time when he has been able to maintain the yard but that it was difficult for a while due to personal circumstances. However, he noted that he is in the process of tidying up now with some hired help.

Analysis

As stated in Section 40(4) of the *Act,* a tenant has 10 days to dispute a One Month Notice. As the One Month Notice was posted on the Tenant's door on June 28, 2019 and the Tenant applied to dispute the notice on July 2, 2019, I find that he applied within the allowable timeframe. Therefore, the matter before me is whether the One Month Notice is valid.

As stated by rule 6.6 of the *Rules of Procedure,* when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The One Month Notice was issued due to a breach of a material term of the tenancy agreement, pursuant to Section 40(1)(g) of the *Act.* Legal counsel for the Tenant submitted that the issue regarding items on the rental site is not a material term, while the Landlord submitted that the park rules are clear regarding a tenant's responsibility to keep the property clean and maintained.

Regarding the definition of a material term, I refer to *Residential Tenancy Policy Guideline 8* which provides clarification 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 Landlord stated that the issue with the items and vehicles on the Tenant's site has been ongoing for many years and that multiple verbal conversations occurred to have the Tenant clean up as well as well as more recent written communication. The first letter submitted in the Landlord's evidence is from 1991 regarding too many vehicles on the property. An additional letter was provided in 2015 and then again beginning in February 2019.

In a letter dated May 17, 2019, the Landlord wrote in part the following:

> *I see that you have received requests to move these items from 3 managers of [the park] over the time span of 28 years!*
>
> *I believe that 28 years is plenty of time for you to have gotten this job done.*

As such, given the time that has passed since the Landlord first identified an issue, I am not fully satisfied that the condition of the yard and the number of vehicles on the property are a material term of the tenancy such that even a trivial breach would lead to the ending of the tenancy. Had this issue been a material term, the Tenant would have been notified in writing through the proper process and the tenancy ended immediately should he not have complied when the issue was first noted.

I also note that as stated in Policy Guideline 8, ending a tenancy for a material breach requires informing the party in writing 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.*

In a letter to the Tenant dated February 15, 2019, the Landlord advised the Tenant to remove the items within three months, although there was no mention of the tenancy ending should the Tenant not comply with this timeframe. In a letter dated May 17, 2019 the Landlord states that the items are to be removed or the Landlord will remove them. Again, there is no mention of the tenancy ending should the Tenant not comply with the request.

In a letter dated May 27, 2019 the Landlord provides until May 29, 2019 for the items/vehicles to be removed or they will remove them on May 30, 2019. Although the copy of the letter dated June 14, 2019 is difficult to read, it seems to state that if the Tenant does not clean up the yard the items will be removed at the Tenant's cost.

As such, based on the testimony and evidence of the Landlord, I do not find that they met the burden of proof to establish that the issue regarding the condition of the Tenant's yard/rental site is a material term of the tenancy. As stated, this is due to the Landlord not ending the tenancy following years of concern over the matter, as well as the Landlord not following the process under the *Act* for ending at tenancy due to a material breach. Therefore, I am not satisfied that the issue as presented by the Landlord is a material term of this tenancy, regardless of the consequences of the Tenant's actions.

Accordingly, I find that the One Month Notice provided for a breach of a material term is not valid and the Tenant's application to cancel the notice is successful. The One Month Notice dated June 28, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act.*

However, I do caution the Tenant that although found to not be a material term of the tenancy, the Landlord has made their position regarding the condition of the Tenant's rental site very clear. Should the Tenant not follow the park rules regarding the condition and maintenance of the property, the Landlord may find further cause to end the tenancy. I find that the Tenant has been sufficiently notified of the Landlord's concerns.

As the Tenant was successful with the application to cancel the One Month Notice, pursuant to Section 65 of the *Act,* I award the recovery of the filing fee in the amount of $100.00. The Tenant may deduct $100.00 from the next monthly rent payment as satisfaction of this fee.

Conclusion

The One Month Notice dated June 28, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act.*

Pursuant to Section 65 of the *Act,* the Tenant may deduct $100.00 from the next monthly rent payment as recovery of the filing fee paid for the Application for Dispute Resolution.

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: August 28, 2019

Residential Tenancy Branch