Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, FF

Introduction

This hearing was reconvened in response to an application by the Tenant pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 40;
2. An Order for more time to make the application to seek a cancellation of the notice to end tenancy - Section 59; and
3. An Order to recover the filing fee for this application - Section 65.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant made two applications resulting in two different hearings being scheduled. The Tenant confirms that the second application is the same as this application. The Tenant indicates in its submissions that there was some confusion in relation to the applications and that the Tenant relied on the help of service agency personnel. The Tenant submits that it had to hire a lawyer to navigate this dispute process. The Tenant seeks to cancel the second application and the Landlord does not dispute this. Given that the applications are the same and that the cancellation is agreed to by the Parties, I cancel of the second application and hearing that was scheduled for July 19, 2019.

Issue(s) to be Decided

Is the Tenant entitled to more time to make its application?

Is the notice to end tenancy valid for its stated reasons?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The Tenant moved into unit #5 on April 1, 2017 with no pad rent payable until May 1, 2020. The Parties consider themselves to be in a tenancy. The Tenant also rents the site on unit #4 from the same Landlord.

The Landlord states that the home on site #4 was not liveable and that the Tenant purchased the home to repair and resell the home.

The Landlord states that on May 14, 2019 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice") by posting the Notice on the door. The Notice sets out details of issues on site #4. The Landlord states that the Notice had a letter attached setting out the details of the reasons stated on the Notice. The Tenant does not dispute receiving the Notice.

The Tenant agrees that the reasons stated on the Notice are that:

1. The tenant or person permitted on the property by the tenant has:
    a. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
    b. Seriously jeopardized the health or safety of lawful right of another occupant or the landlord;
    c. Put the landlord's property at significant risk;
2. The tenant or 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;
    b. Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
    c. Jeopardize a lawful right or interest of another occupant or the landlord;
3. The tenant of person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park; and
4. The tenant has not done required repairs of damage to the unit/site.

The Tenant states that there was no letter attached to the Notice. The Landlord's Witness RP states that it served an envelope on behalf of the Landlord by posting the

envelope on the door of the Tenant's unit on May 14, 2019. The Witness states that it does not know the contents of the envelope.

The Tenant submits that it made its application to dispute the Notice on May 24, 2019 with the help of service agency personnel. The Tenant provides copies of two applications both dated May 24, 2019. I note that there was some confusion with the Tenant's filing of two applications as set out above under preliminary matters.

The Landlord states that the Tenant has conducted an illegal activity on site #4 by storing gas in the shed. The Landlord states that there are regulations under a fire code that prevents such storage. The Landlord confirms that no documentary evidence of the fire code has been provided as evidence for this dispute. The Landlord states that it went to both the village and the fire department about the gas storage but that nobody could provide the Landlord with any documentation. The Landlord argues that if not illegal it is certainly unsafe and that the Landlord thinks that this storage is a violation. The Landlord's Witness GW states that it saw the gas drum stored at the back of site #4 sitting outside the trailer quite some time ago and while the Witness cannot recall when the drum was seen, it believes that this occurred sometime in the spring of 2019 and was present for about one or two months. The Witness states that it did not witness or know of any other problems with the storage at the time but that the Witness, as a former fire chief, was concerned about fire hazards. The Witness states that it did not report this storage to anyone other than the Landlord.

The Tenant states that it is not illegal to store the gas. The Tenant's legal counsel ("Counsel") argues that this issue only pertains to the tenancy at site #4 and not to the tenancy of site #5. Counsel submits that when the Tenant was made aware of the storage in approximately May 2019 the Tenant immediately rectified the situation and removed the drum. Counsel argues that the Landlord has only presented hypothetical scenarios of hazards without any evidence that anything occurred as a result of the storage. Counsel argues that the Landlord entered site #4 without the Tenant's

permission and that this is a breach of the Tenant's rights to privacy. Counsel argues that the Landlord should not be able to rely on evidence arising from a landlord's breach of the Act to pursue a landlord's right under the Act. The Landlord states that it entered site #4 with the Tenant in May 2019 and saw a barrel outside the shed. The Landlord states that the Tenant had the drums removed within 2 days after that visit. Counsel argues that the Tenant was not willing to allow the Landlord entry but that the Landlord entered anyway.

The Landlord states that the Tenant's occupants were filling other persons cars with gas on a road on the park property. The Landlord states that it cannot give dates for these incidents but that they occurred between May and June 2019. The Landlord states that this is an illegal activity that posed a serious fire risk, is an environmental hazard and a violation. The Landlord states that these incidents have caused extraordinary damage by leaving stain spots on the road. The Landlord states that this also upset other tenants. Witness GW states that the Tenant's occupants would spill gas on the road while filling other persons tanks leaving 3 or 4 stains.

Landlord's Witness ME states that on May 12, 2019 the Tenant's occupants asked the Witness if they needed some gas. Witness ME states that it was not upset by this question but was stunned. Witness ME states that this occurred only once. Witness ME provided evidence of a dispute between one of the Tenant's occupants and the Witness in relation to incomplete or insufficient work that this occupant was to have done on the Witness's unit by the occupant. The Witness was informed that this evidence was not relevant to this dispute as it was in relation to a dispute between itself and a person who is not a party to these proceedings. The Witness became upset and left the hearing. Counsel asks that this evidence be stricken as the Witness prevented the Tenant from asking questions about its evidence or to cross examine the evidence.

The Landlord states that repairs to the Tenant's home on site #4 have not been done as a stop work order was issued due to no permit. The Landlord argues that the home has

been left open and is both unsightly and unsafe, that somebody may get hurt, that it is a violation of government rules, that it attracts wild animals and that the Landlord would suffer liability or insurance implications if someone is hurt. The Landlord states that this is putting the Landlord's property at significant risk of liability. The Landlord states that the state of the unit is also in violation of park rules that require tenants to maintain the unit on the site in safe conditions. The Landlord argues that this is also a breach of a material term of the tenancy as the park rules are part of the tenancy agreement. The Landlord states that the rules required that all additions and alteration must be approved by the park and permits must be obtained. The Landlord states that the Tenant was given permission to buy and fix the unit on site #4. The Landlord argues that the stop work order is also a violation of the building codes and bylaws. The Tenants counsel submits that the permit was obtain on March 7, 2019 and that prior to this date the house was tied up in probate. Counsel submits that work on site #4 was being performed by the occupants of site #5 but that they were kicked out of the park in May 2019 after which work did not continue.

Counsel argues that all of the issues raised by the Landlord are in relation to site #4 and not site #5 as referred to in the Notice. Counsel argues that the Landlord provided no photos showing the site was unsafe or evidence of any regulation violations. Counsel argues that the Landlord has not provided any evidence of any significant risk. The Landlord states that the Tenant is being evicted from site #5 even though the issues are with site #4 because the Tenant does not live at site #4. Counsel argues that the Tenant cannot be evicted from site #5 for issues with site #4.

The Landlord states that the Tenant has stored an unlicensed vehicle on site #4 from March to May 2019 and that this is a violation of the park rules and a breach of a

material term of the tenancy. The Landlord argues that this is a safety issue as there is no insurance and a fire could start.

The Landlord states that on May 13, 2019 the Tenant's occupants interfered with the sale of a mobile home by telling the prospective purchaser on that date that the Landlord was terrible. The Landlord confirms that the home was not being sold by the Landlord as it was owned by a third party. The Landlord argues that the occupant's statement affects the Landlord's business of renting the sites. The Landlord states that there has not been any reduction in its business as a result of the statements and that the unit was sold in August, September or October of 2019. The Landlord provides a copy of a letter from the realtor. Counsel submits that this letter does not disclose the identity of the persons who interfered with the showing and just refers to "neighbours across the street".

The Landlord states that the Tenant brought a dog onto the site without permission in early 2018. The Landlord states that it became aware that the dog was vicious when the dog attacked one of the Tenant's occupants. The Landlord states that the presence of this dog was unsafe for all the other tenants and for the Landlord. The Landlord states that no other person was attacked by the dog. Counsel argues that this incident is too remote to be considered an issue relevant to the Notice, that the dog was only present for one or two months and that the dog was gone in July 2018.

Analysis

Section 40 of the Act provides that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Section 83 of the Act provides that a document, if given or served by attaching a copy of the document to a door or other place, is deemed to be received

on the 3rd day after it is attached. Section 59 of the Act provides that a time limit established by this Act may be extended only in exceptional circumstances.

Based on the undisputed evidence that the Landlord served the Notice on May 14, 2019 by posting it on the door, I find that the Notice is deemed received on May 17, 2019. Given the evidence of confusion with the Tenant's double applications, the evidence that the Tenant required help of a service agency in making the applications, the Tenant's documentary and oral evidence that its application was made on May 24, 2019, and noting that the Landlord made no submissions on the date of the Tenant's application, I find on a balance of probabilities that the Tenant did make and present for filing its application on May 24, 2019 that was, for unknown reasons, filed later. For these reasons I find that exceptional circumstances exist allowing an extension of time for the making of the application.

Section 40 of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy where, inter alia:

- the tenant or a person permitted on the residential property by the tenant has
    - (i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
    - (ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
    - (iii)put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
    - (i)has caused or is likely to cause damage to the landlord's property,
    - (ii)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
    - (iii)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- the tenant does not repair damage to the rental unit or other residential property, as required under section 26 *[obligations to repair and maintain]*, within a reasonable time.

Gas Storage

Although the Landlord asserts that the storage of a gas container or the filling of gas on the property is illegal, the Landlord provided no reference to any federal, provincial, or municipal law that restricts such storage. For this reason, I find on a balance of probabilities that the Landlord has not provided sufficient evidence to substantiate that the storage or filling of gas is an illegal activity. Witness GW gave evidence of being a previous fire chief and of having seen the gas stored for one to two months. While the storage of gas containers may be unsafe, as Witness GW did nothing other than report the gas storage to the Landlord, as there is no evidence of any problems associated with the storage other than hypothetical scenarios, considering the background of the Witness as a fire chief and the length of time the Witness was aware of the storage, I find that the Landlord has not provided sufficient evidence that the storage was a significant interference with or and unreasonable disturbance to anyone or a significant risk to the Landlord's property. Further given the undisputed evidence that the Tenant had the gas container removed very quickly after being informed of it being a problem, I find that the Landlord has not substantiated that the Tenant caused anyone or anything serious jeopardy.

Gas Filling

The Landlord provided no evidence of any law that makes gas filling illegal. The only evidence of disturbance is that the gas filling was upsetting to some other tenants due to possible fire hazards. There was no evidence of how the filling of gas in a vehicle is a fire hazard. I consider that Witness ME, as one of those tenants, only gave evidence of disturbance related to its dissatisfaction with work done on its own unit. This is not

evidence of unreasonable disturbance, serious jeopardy or significant risk by the filling of gas. Given the evidence of only a few stains on the road and as there is no evidence that the road was impaired for use in any way due to the stains, I find that the Landlord has not substantiated that the stains caused any extraordinary damage.

Repairs

As the Notice deals with the tenancy of site #5 and not site #4, and as the evidence of incomplete repairs is only related to site #4, I find that the Landlord has not substantiated that the tenancy of site #5 must end for this reason.

Unlicensed Vehicle

A violation of park rules does not equate to an illegal activity. The Notice does not include breach of a material term of the tenancy and I note that the vehicle was not parked at site 5, which is the subject of the Notice. There is no evidence that the vehicle caused any significant interference or unreasonable disturbance or jeopardy of anyone's rights. As the Landlord only provides hypothetical issues that may arise with the parking of an unlicensed vehicle, I find that the Landlord has not provided sufficient evidence of any significant risk to the Landlord's property.

Interference with Sale of Home

There is no evidence that any person or any statement by any person caused any loss of sale of any home and or any loss of business to the Landlord. Further, the real estate letter does not identify any occupant of the Tenant as the source of interference. Finally, while section 40 of the Act allows a landlord to end a tenancy for cause where the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property, the Notice does not include this reason for ending the tenancy. For these reasons I find that the Landlord has not substantiated that any discussion between the Tenant's occupants and the real estate agent is a valid reason to end the tenancy as stated on the Notice.

Dog

As the issue of the dog was resolved nearly a year before the Notice was served, I find that this issue is too remote to substantiate a reason to end to the tenancy.

For the above reasons I find that the Notice is not valid, and I cancel the Notice. The tenancy continues. As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the $100.00 filing fee.

Conclusion

The Notice is cancelled.

I grant the Tenant an order under Section 60 of the Act for **$100.00**. If necessary, this order may be filed in the Small Claims 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: September 18, 2019

Residential Tenancy Branch