Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC, FFT

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 (the 1 Month Notice) pursuant to section 40; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

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

As the tenant confirmed that they received the 1 Month Notice sent by the landlord by registered mail on July 11, 2019, I find that the tenant was duly served with this Notice in accordance with section 81 of the *Act*. As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on July 25, 2019, I find that the landlord was duly served with this package in accordance with section 82 of the *Act*. Since both parties confirmed that they had received one another's written evidence in sufficient time to review one another's documents and photographs, I find that the written and photographic evidence was served in accordance with section 81 of the *Act*.

Issues(s) to be Decided

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 recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave undisputed sworn testimony that they moved into this manufactured home on this lot in this manufactured home park in 1988. Although they initially rented from the previous owner of this home, the tenant said that they purchased the manufactured home in 1989. The tenant could not recall ever having signed any Manufactured Home Park Tenancy Agreement with the then owner of this manufactured home park or with the current owner who purchased the park in 2010. The landlord said that there is a written Agreement in place that was signed on May 10, 1995 by the tenant and the previous owner. The landlord did not enter into written evidence a copy of this Agreement. The parties agreed that the current monthly rental for this manufactured home pad rental site is $340.00, payable in advance on the first of each month. They also agreed that the tenant has paid their pad rental for September 2019.

The parties agreed that the only written warning letter provided to the tenant was taped on the door of the tenant's manufactured home on July 8, 2019. The tenant said they received that warning letter later that day. The warning letter gave the tenant 24 hours to remove the tenant's work truck and a boat from a grassed area adjacent to the tenant's manufactured home and to a site not within the manufactured home park. The tenant said that they removed the work truck and boat from the grassed area that evening to the tenant's driveway after receiving the landlord's letter.

The tenant maintained that nothing in the park rules restricts the tenant from keeping the boat and work truck from the tenant's assigned lot and driveway. The landlord did not dispute the tenant's claim that no copy of any Rules for this manufactured home park have been provided to the tenant. The landlord said that other tenants in this park generally have a maximum of two vehicles on their lots. The tenant provided sworn testimony and photographic evidence that others in this park have more than two vehicles or boats on their lots.

The landlord's 1 Month Notice requesting an end to this tenancy by August 31, 2019, identified the following reasons for ending this tenancy for cause:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *put the landlord’s property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord’s property;*

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;*

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

At the hearing, neither the landlord nor the landlord's witness disputed the tenant's claim that no charges have been laid against the tenant, and that the tenant has not done anything illegal.

The landlord said that the significant risk referred to in the landlord's 1 Month Notice was potential damage to the grassed area, which is over the water and sewer lines for this park and where the tenant has been parking their work truck and boat. The landlord also maintained that the tenant's work truck has damaged the asphalt driveway assigned to the tenant.

The tenant testified that they know where the water and sewer lines are located, pointing out their location in the grassed area of the lot adjacent to theirs in one of the landlord's photographs. The tenant said that they never parked directly over these lines and removed their truck and boat from this area as requested after receiving the landlord's July 8, 2019 warning letter.

At the hearing, the landlord said that they have never replaced asphalt in the driveways in this park since they purchased it in 2010. The landlord said that the park was first created in 1975, and, as far as they knew, the driveways have never been replaced or upgraded since that time. The tenant said that they put loads of gravel on this property shortly after they purchased their manufactured home, and paid for additional paving over the years for the driveways on their lots.

The landlord entered into written evidence a copy of an August 21, 2019 letter co-signed by the landlord's witness at this hearing. At the hearing, the landlord's witness confirmed the information contained in their letter, and alleged that the tenant has been engaged in an ongoing process of harassing and intimidating the witness and their co-tenant over a number of years. These concerns included the tenant's alleged practice of starting up their work truck at 4:00 a.m. and warming it up for a lengthy period of time, before revving up the engine so as to disturb the witness and their co-tenant to the maximum amount possible. The statement from the witness also referenced a series of incidents and altercations with the tenant, some of which have prompted the witness to involve the police.

The tenant and the occupant who also resides in the manufactured home with the tenant disputed the account of the noise emanating from the tenant`s truck provided by the landlord`s witness. The tenant provided sworn testimony and written evidence that there have only been a few emergency situations where they have started up their work vehicle prior to 5:20 a.m. They said that they warm up their vehicle for a short period of time and then exit the property. The tenant maintained that they are the victim of bullying and ongoing harassment from the landlord`s witness, citing incidents of their own as evidence of the behaviours and actions of the landlord`s witness and that person`s co-tenant.

The landlord maintained that the tenant continues to keep a large work truck on the premises, along with a boat. The landlord's warning letter advised the tenant that the park was not to be used as a storage facility for vehicles and boats, as it is not zoned for such usage. The landlord also referenced a previous 2012 hearing before an Arbitrator appointed pursuant to the *Act,* in which the parties agreed to a settlement whereby the tenant committed to remove a recreational vehicle from the lot adjacent to the tenant's by September 30, 2012. The tenant and their occupant testified that the tenant removed the recreational vehicle from the adjacent lot in accordance with their settlement agreement of 2012. The landlord maintained that the tenant has continued to place their vehicles on the lot adjacent to theirs for varying periods since 2012.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

Section 40 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 40(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

In considering the landlord's 1 Month Notice, I noted at the hearing that the landlord has included little evidence to support ending this tenancy for most of the five reasons cited in the Notice. For example, the landlord acknowledged that they have not produced any sworn testimony or written evidence that the tenant has been engaged in any illegal

activity that could give rise to ending this tenancy on the basis of the 1 Month Notice. While the police have been called by the landlord's witness a number of times, the landlord has not provided evidence to demonstrate that charges have been laid against the tenant, nor was the landlord aware of any pending charges. Without any copies of police reports or statements from the police, I find no basis for the landlord's issuance of the 1 Month Notice for the following two reasons:

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;*

Turning to the last of the reasons cited in the landlord's 1 Month Notice, it is unclear which issue of concern raised by the landlord was alleged to have been a contravention of a breach of a material term of the tenancy agreement. A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, 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. Policy Guideline #8 reads in part as follows:

> *To end a tenancy agreement for breach of a material term the party alleging a breach…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…*

On this point, the tenant gave undisputed sworn testimony that they have not been provided with a copy of the tenancy agreement. There is also undisputed testimony before me that the first written notice provided to the tenant of any kind was the July 8, 2019 warning letter posted on their door, three days before the landlord issued the 1 Month Notice. As was noted above, a tenancy can only be ended for the breach of a material term of a tenancy agreement after the tenant has been provided within a

reasonable period of time of having been notified of the alleged breach. As I find almost none of the key elements for ending this tenancy for the breach of a material term of the tenancy agreement were in place when this 1Month Notice was issued, I find that the landlord has no basis to end this tenancy for the breach of a material term of this tenancy agreement.

The landlord's attempt to end this tenancy because the tenant is putting the landlord's property at significant risk relies primarily on the location of the tenant's placement of vehicles and a boat on the property. The landlord maintained that the tenant has been positioning their boat and work truck on a grassed area over the landlord's water and sewer lines. The tenant provided photographic evidence and sworn testimony that they have been careful about where they positioned their truck and boat so as to not damage the water and sewer lines. More importantly, the tenant testified that they moved their boat and work truck to their driveway on the same night that they received the landlord's July 8, 2019 warning letter. As I find on a balance of probabilities that the landlord has failed to demonstrate to the extent required that the tenant has failed to comply with the notice to remove their vehicle and boat from an area that could damage the landlord's water and sewer lines. I allow the tenant's application to dismiss this portion of the landlord's 1 Month Notice.

The landlord also asserted that the weight of the tenant's vehicles, primarily it would appear, the tenant's work truck has damaged the asphalt driveway assigned to the tenant's lot. In this regard, I noted at the hearing that RTB Policy Guideline #40 provides guidance for arbitrators with respect to the Useful Life of various elements of a tenancy. In this case, the useful life of asphalt paving is estimated at 15 years. The landlord gave sworn evidence that the tenant's driveway has the original paving dating back to 1975, when this park was first created. The tenant said that they had to pave the driveway themselves shortly after their tenancy began, at their own cost. In either event, the existing driveway is far older than the 15 year time period estimated in Policy Guideline #40. Any damage to the driveway by this time, especially in this northern location exposed to freeze and thaw circumstances, would be attributable to reasonable wear and tear that would have occurred over time. For these reasons, I also allow the tenant's application to dismiss this portion of the landlord's 1 Month Notice.

I have also considered the first of the reasons cited in the landlord's 1 Month Notice, the claim that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. At the hearing, the parties and the witness provided additional sworn testimony that there is definitely conflict occurring between the tenant, the landlord and the landlord's witness. The landlord's sole warning letter of July 8, 2019

made no mention whatsoever of significant interference with or unreasonable disturbance of other tenants in this park or with the landlord. Rather, it was focussed solely on the removal of the tenant's truck and other possessions including the tenant's boat to a storage facility. While some of the alleged problem with the tenant's truck appears to have been directed at the noise and disturbance created by that truck, I find that the tenant has not been given any adequate or reasonable written notice with respect to the behaviours that have given rise to the landlord's claim that this tenancy should be ended for significantly interfering with or unreasonably disturbing other tenants or the landlord. Without such notice, the tenant has been in no position to take any corrective action deemed necessary in order to address the landlord's concerns in this regard.

The landlord has relied almost solely on evidence from their witness, evidence which the tenant and the occupant firmly denied and contested. The landlord produced no letters from any other tenants in this park, confirming their witness's account of the tenant's behaviours and actions, nor did anyone else attend this hearing to provide sworn testimony.

While a tenancy can be ended in some very serious circumstances without offering a tenant an opportunity to resolve a landlord's concerns, I do not view the severity of this situation as falling into that category as the tenant has been given little opportunity to take corrective action to accommodate the concerns raised by the landlord. Based on a balance of probabilities, I find that the landlord has not met the threshold required in order to demonstrate that the landlord as of July 11, 2019 had sufficient reason to end this tenancy on the basis of the tenant's alleged significant interference with or unreasonable disturbance of the landlord or other occupants in this park.

For these reasons, I allow the tenant's application, as none of the landlord's reasons for ending this tenancy on the basis of the 1 Month Notice of July 11, 2019 enable the landlord to end this tenancy.
Since the tenant has been successful in this application, I allow the tenant to recover their filing fee from the landlord.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice. The landlord's 1 Month Notice is set aside and of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary Order in the tenant's favour in the amount of $100.00, which enables the tenant to recover their filing fee from the landlord. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. Since this tenancy is continuing, the tenant may also implement this monetary award by reducing a future monthly pad rental payment to the landlord by $100.00.

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: September 23, 2019

Residential Tenancy Branch