Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SPRUCE CAPITAL TRAILER PARK LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 19, 2019 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated November 11, 2019 (the "Notice").

The Tenant appeared at the hearing. S.C. and L.J. appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. L.J. confirmed receipt of the hearing package and Tenant's evidence. The Tenant confirmed receipt of the Landlord's evidence except for an email dated December 21, 2019. S.C. confirmed he did not personally serve this on the Tenant. L.J. confirmed she did not serve this on the Tenant. I heard the parties on whether the email should be admitted or excluded.

The Landlord was required to serve their evidence on the Tenant pursuant to the Rules of Procedure (the "Rules"). The Landlord did not serve the email on the Tenant. The email is not something the Tenant had regardless of service. I exclude the email as I find it would be unfair to the Tenant to consider an email he has not seen and therefore cannot comment on.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence as well as the oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?

2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started September 13, 2018 and is a month-to-month tenancy. Rent is due on the first day of each month. The agreement includes an addendum which the parties agreed is the Park Rules.

The Notice was submitted as evidence. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

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

The parties agreed the Notice was served on the Tenant in person November 13, 2019.

In relation to the first ground, L.J. testified that the Tenant has broken the Park Rules. L.J. testified that the Tenant has propane bottles in his yard. She submitted that these pose a safety issue because the propane bottles could explode. L.J. submitted that having the propane bottles is illegal. I asked L.J. what law she was relying on for this submission. L.J. could not point to one.

When questioned about the first ground further, L.J. acknowledged the Tenant was not engaging in illegal activity, other than breaking the Park Rules. L.J. confirmed this is covered by the second ground.

S.C. testified about the propane bottles and submitted that this is a fire hazard and safety issue. S.C. could not point to some law the Landlord was relying on to show this amounts to illegal activity.

In reply, the Tenant testified that the municipal code allows him to have the propane bottles in his yard. The Tenant denied that he has engaged in illegal activity.

In relation to the second ground, L.J. raised the following issues and provided the following testimony.

The Tenant does not keep his yard clean contrary to Park Rule 8 in section 2. The Tenant keeps stuff in his yard. The Landlord sent the Tenant a warning letter about this September 16, 2019. The Tenant removed some of the stuff, but the yard is still not in a satisfactory condition.

The Tenant did not skirt his home properly contrary to Park Rule 22 in section 3. The Tenant was asked to skirt his home. He did so but did not use proper skirting and did not paint the skirting. No written warning was given to the Tenant about this.

The Tenant causes noise issues contrary to Park Rules 59 and 60 in section 9. The Tenant was sent a noise warning November 25, 2019. The Landlord submitted a video of the Tenant making noise and using profane language. The Tenant yells. The Tenant needs to be considerate of his neighbours.

The Tenant has a truck parked in his front yard which gets in the way of snow plowing. The Tenant was asked to move this. The Tenant said he cannot move it because it does not have a transmission. The Tenant is violating Park Rules 44 and 47 in section 5. The Tenant was sent a warning letter about this January 11, 2020.

L.J. pointed to Park Rule 63 and 65 which state:

> 63. A second complaint against the same mobile home could result in calling the police or receiving a serious warning. On receiving a third complaint, the park Manager may deliver an eviction notice to the tenant and request the tenant to move their mobile home from the park.
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> 65. ANY VIOLATION OF THESE RULES COULD BE CAUSE FOR TERMINATION OF TENANCY.

L.J. testified about the Tenant having a tarp on his roof which could catch fire. L.J. did not point to which Park Rule the Tenant was breaching in this regard nor did L.J. testify about sending the Tenant a written warning regarding this.

L.J. testified that there is nothing in the tenancy agreement or Park Rules which states that the Park Rules are material terms of the tenancy agreement.

L.J. submitted that the Park Rules relied on are material terms of the tenancy agreement.

I explained to L.J. and S.C. the following a number of times. Not all terms in a tenancy agreement are material terms. A material term is defined in Policy Guideline 8 as 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.

I asked L.J. and S.C. to explain why they say the Park Rules outlined above are material terms. L.J. said she was not clear on this. L.J. said S.C. completed the Notice. S.C. asked to have the Translator assist with the question and I allowed him to have the Translator assist. I explained to the Translator that not all terms in a tenancy agreement are material terms. I read out the definition of a material term in Policy Guideline 8. I reiterated these things numerous times. S.C. did not make submissions on why the Park Rules outlined above are material terms. L.J. submitted that the Landlord wants the park to be upgraded and the Park Rules are all “materialistic”. L.J. submitted that the materials in the Tenant’s yard makes it so it does not look clean. S.C. submitted that the parties signed the tenancy agreement and Park Rules and so agreed on them. S.C. submitted that the Tenant has broken too many of the Park Rules.

In reply, the Tenant submitted that the Park Rules outlined by L.J. are not material terms of the tenancy agreement. He said his actions are not harming anyone. The Tenant denied getting the September 16, 2019 warning letter in relation to Park Rule 8 in section 2. The Tenant acknowledged receiving the November 25, 2019 and January 11, 2019 warnings.

The Tenant testified that he received a written warning July 16, 2019 about cleaning his yard and skirting his home by August 01, 2019. The Tenant testified that he complied by August 02, 2019.

The Tenant testified that he does not make noise before 7:30 a.m. or after 11:00 p.m. which are the times noted in the Park Rules. The Tenant testified that he is doing construction and home improvements and cannot do so without making noise. In relation to the video of the Tenant submitted showing the Tenant making noise and using profanities, the Tenant testified that this happened once for 15 minutes because he was frustrated.

The Tenant testified that his yard is always a bit of a mess because he is doing home improvements. He testified that he does clean up the yard.

In reply, S.C. testified that the items in the Tenant's yard are not for home improvements but for the Tenant to sell.

Analysis

The Notice was issued pursuant to sections 40(1)(d) and (g) of the *Manufactured Home Park Tenancy Act* (the "*Act*") which state:

> (d) the tenant or a person permitted in the manufactured home park by the tenant has engaged in **illegal activity** that…
>
> (i) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the manufactured home park…
>
> (g) 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;
>
> (emphasis added)

The Tenant had 10 days from receiving the Notice to dispute it under section 40(4) of the *Act*. There was no issue that the Tenant received the Notice November 13, 2019. The Application was filed November 19, 2019, within the time limit.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules.

Policy Guideline 32 relates to illegal activities and states in part:

> The term "illegal activity" would include a **serious violation of federal, provincial or municipal law**, whether or not it is an offense under the Criminal Code. It may include an act **prohibited by any statute or bylaw** which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.
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> **The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator** and to the other party, in accordance with the Rules of Procedure, **a legible copy of the relevant statute or bylaw…**
>
> (emphasis added)

I do not accept that violating the Park Rules alone amounts to illegal activity as Park Rules are not federal, provincial or municipal law. Neither L.J. nor S.C. could point to a federal, provincial or municipal law that the Tenant had violated. The Landlord has failed to prove the first ground.

Policy Guideline 8 deals with material terms in a tenancy agreement and states:

> 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.
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> 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 question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.
> 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.

I am not satisfied any of the Park Rules referred to are material terms. It is not stated that they are material terms in the tenancy agreement or Park Rules. The Tenant did not agree that they are material terms. It was clear during the hearing that neither L.J. nor S.C. knew what a material term is. Neither L.J. nor S.C. provided compelling evidence or submissions on why the Park Rules referred to are material terms. It is not enough that the Park Rules are part of the tenancy agreement and were signed by the parties as is clear from Policy Guideline 8. Further, it is not the number of breaches that is the issue. The issue the Landlord must prove is that the Park Rules relied on are material terms. The Landlord failed to do so.

I acknowledge Park Rule 63 and 65; however, I do not find these to be the equivalent of the tenancy agreement or Park Rules stating that the Park Rules are material terms.

Further, I would not have upheld the Notice on the second ground in any event given the lack of written warnings provided to the Tenant about the issues raised.

The Tenant denied receiving the September 16, 2019 warning. The Landlord did not provide evidence, other than the testimony of L.J., to prove the warning was provided to the Tenant. In the absence of further evidence, I am not satisfied the warning was provided to the Tenant.

The Tenant testified that he received a warning in July; however, this was not in evidence before me and therefore I am not satisfied the warning complied with the requirements in Policy Guideline 8.

In relation to the November 25, 2019 warning, this was provided to the Tenant after the Notice was issued. Therefore, it cannot form the grounds for the Notice. I also note that the warning states that, if the Tenant continues making noise, the Tenant will be given two warnings and the third will be eviction. Yet L.J. sought to rely on this as a basis for the Notice issued November 11, 2019.

In relation to the January 11, 2020 warning, this was provided to the Tenant after the Notice was issued and cannot form the grounds for the Notice.

In the circumstances, I am not satisfied the Landlord complied with Policy Guideline 8 in relation to ending a tenancy for a breach of a material term as I am not satisfied the Landlord provided the Tenant adequate written warnings about the issues raised.

The Landlord has failed to prove the second ground for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

I do note that it is open to the Landlord to issue the Tenant a notice to end tenancy under section 40 of the *Act* based on other grounds if applicable and therefore the Tenant should comply with the tenancy agreement and Park Rules.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with 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 *Act*.

Dated: January 14, 2020

Residential Tenancy Branch