



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC, FFT

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. The hearing originally commenced on December 12, 2019 and both the tenant and the landlord's agent appeared. I adjourned the hearing due to the extremely poor telephone connection of the landlord's agent. An interim decision was issued and should be read in conjunction with this decision.

At the reconvened hearing, the tenant appeared and the park manager (referred to by initials KC in this decision) appeared. The park manager informed me that the landlord's agent who had appeared at the December 12, 2019 hearing had since passed away and he had been appointed to act as the owner's agent. I had been provided documentation showing the identity of the owner and a letter the owner signed appointing KC to act on her behalf in this matter.

In filing this Application for Dispute Resolution, the tenant had identified the landlord as being the landlord's agent, who is now deceased. I have amended the style of cause on this decision to reflect the name of the landlord as the owner of the property and as identified as the landlord on the tenancy agreement.

Aside from disputing the 1 Month Notice, the tenant had identified other issues in filing his application; however, pursuant to Rule 2.3 of the Rules of Procedure, I have severed those other issues as they were not related to the primary issue to resolve: which is whether the 1 Month Notice should be upheld or cancelled. I encouraged the parties to try to resolve those other issues between themselves; however, if unsuccessful the tenant has leave to reapply for dispute resolution.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. Is it necessary and appropriate to issue orders to the tenant?

Background and Evidence

The tenant has been renting the manufactured home site since approximately June 2005. In November 2018 the parties executed the current tenancy agreement. The tenant is currently paying rent of \$274.00 on the first day of every month.

It is undisputed that the manufactured home on the site is the personal property of the tenant but that it is currently vacant. Rather, the tenant continues to pay rent on the site and comes to the site approximately once per week with a view to cleaning up the property, making repairs, and renovating the manufactured home.

The landlord's former agent issued the subject 1 Month Notice to End Tenancy for Cause on October 24, 2019 and it was sent to the tenant via registered mail. The tenant filed to dispute the 1 Month Notice within the time limit for doing so.

The 1 Month Notice indicates the following reasons for ending the tenancy:

- Tenant has not done required repairs of damage to the unit/site.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the details of cause section of the 1 month Notice, the landlord referred to the tenancy agreement and park rules marked in yellow highlight and two letters issued to the tenant on April 8, 2019 and June 28, 2019.

Landlord's position

With respect to damage, KC submitted that the tenant is responsible for failing to repair damage to:

- The fence due to failure the tenant's failure to maintain it.
- The front steps leading to the manufactured home that are not stable and unpainted.

- Skirting that was pulled off the bottom of the manufactured home.
- Trees and shrubs on the site that were not maintained and damaged as a result.

I noted that clause 10 of the tenancy agreement provided as follows:

10. TENANT'S PROPERTY & FIXTURES The tenant agrees that the amenities and fixtures on the Site checked below are the property of the tenant and that the tenant is responsible for their maintenance and upkeep.

shed metal.

- Oil Tank - Fence - Out Building(s) - Deck(s) - Home Addition(s)
- Landscaping within site (lawn, trees, shrubs, flowerbeds)
- Other: _____

All trees/shrubs around the exterior property line of the Park are of the responsibility of the landlord unless otherwise agreed upon in writing.

Any alterations, additions, or improvements to the exterior of the tenant's home or to the Site require the prior written approval of the landlord, as well as any permit(s) that may be required by the local authority. Such improvements are the property of the tenant, and ownership is transferred to the Purchaser if the home is sold on the Site. No compensation of any kind is payable to the tenant by the landlord for Site improvements left behind if the Site is vacated in the future. Maintenance of improvements is the responsibility of the tenant, and the landlord is neither responsible nor liable for the repair, safety, construction standards, or future condition of the improvements. Unless otherwise agreed in writing by the landlord and tenant, the tenant is responsible for expenses and maintenance of the tenant's manufactured home and additions. This includes the utility connection lines from the Park's service points to the home, the setup, blocking, and periodic leveling of the home and additions, the Site's landscaping, fencing, rock walls, driveways, and other Site improvements. The tenant must control the drainage of water, either from the manufactured home or the Site surface, to ensure no water accumulates on the site, other Sites, or common areas.

Based on clause 10, as it was written, I was of view the tenant is not responsible for the fence or the trees and shrubs since those items were not circled like the other amenities were. The landlord's agent submitted that maintenance of the fence and trees and shrubs by the tenant is provided for in the Park Rules. Park Rules that conflict with the tenancy agreement are not enforceable. In other words, the tenancy agreement takes precedent where there is a conflict between a tenancy agreement and Park Rules. As such, I declined to give further consideration to the Park Rules concerning fences and trees/shrubs and the tenancy agreement provides that the tenant is only responsible for maintaining the shed, the addition(s) to the manufactured home, and the lawn, as circled in the tenancy agreement.

I considered the front steps and the skirting to be “home additions” and the tenant responsible for repairing and maintaining these items. As such, I continued to hear from the parties with respect to these two items.

With respect to the breach of a material term of the tenancy agreement, the landlord’s agent submitted that also pertains to a violation of clause 10 of the tenancy agreement with respect to the unstable and unpainted steps. I noted that the front steps were identified as issues by the landlord in the landlord’s letters of April 8, 2019 and June 28, 2019. The letters do not mention skirting; however, the landlord agent pointed to photographs that accompanied the June 5, 2019 letter to the tenant that show insulation laying on the ground because the skirting is removed.

Tenant’s position

The tenant was of the position the front steps are structurally sound; however, he was agreeable to rebuilding the front steps and having them painted within one month of today’s date to preserve the tenancy.

The tenant acknowledged that he has been working under the manufactured home in an effort to repair the water lines and that he left some of the skirting off. The tenant was agreeable to ensuring the skirting is reattached to the manufactured home after he has finished working on the water line for the day.

Mutual agreement

I enquired with the landlord agent if the landlord would be willing to continue the tenancy at this time if I were to issue orders to the tenant. The landlord’s agent indicated these matters had been ongoing for much too long; however, the landlord was willing to permit the tenancy to continue at this time, provided the tenant be ordered to have the front steps rebuilt so that they are safe and sound and painted within one month; and, the tenant ensures the skirting is attached to the manufactured home when he is not actively working underneath the manufactured home.

The landlord also sought permission to turn the water supply line off to the manufactured home site to prevent frozen pipes or possible damage to the property as the result of frozen pipes. The tenant consented for KC to do that. Both parties indicated they understood that when the tenant wants the water supply restored to the site the landlord will restore the service immediately upon the tenant’s request.

I noted that much of the communication and evidence issued by the landlord surrounded the lack of cleanliness and tidiness of the manufactured home site. I read from section 26 of the Act and impressed upon the tenant his obligation to repair and maintain the site despite his physical or financial limitations. The tenant indicated he understood.

Analysis

Given the landlord's willingness to continue this tenancy at the present time, conditional upon receiving orders for the tenant to make certain repairs, and the tenant's willingness to accomplish these repairs to preserve the tenancy, I set aside the 1 Month Notice of October 24, 2019 and I issue the following orders to the tenant.

I ORDER the tenant to accomplish the following no later than February 24, 2020:

- 1. Ensure the front steps are built so that they are structurally sound and safe for use by persons who may come onto the rental site.**
- 2. Ensure all skirting is securely affixed to the manufactured home and that the skirting remains affixed unless the tenant, or person hired by the tenant, is actively working underneath the manufactured home.**

As a delegated authority of the Director, my orders above constitute an order of the Director. Should the tenant violate my orders the landlord may issue another 1 Month Notice citing the following reason for ending the tenancy, as provided under section 40(1)(k):

- (k) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - (i) the date the tenant receives the order;
 - (ii) the date specified in the order for the tenant to comply with the order.

With a view to avoiding future disputes, I issue additional orders to the tenant with this decision, as follows:

Considering the lawn is the responsibility of the tenant under the tenancy agreement and I saw photographs of long grass on the manufactured home site, **I further order**

that the tenant ensure the lawn is cut at reasonable intervals during the growing season.

In the photographs provided to me, and upon review of the landlord's letters to the tenant and the Park rules, **I further order the tenant to ensure he keeps the site free of debris, including construction debris; and, firewood is to be neatly stacked in the back of the manufactured home site.**

In addition to the above orders, the tenant remains obligated to comply with the terms of the tenancy agreement; the Park Rules so long as they do not conflict with the tenancy agreement; and, the Manufactured Home Park Tenancy Act and its Regulations.

Section 26 of the Act provides for both a landlord's and a tenant's obligation to repair and maintain. Section 26 provides as follows:

Landlord and tenant obligations to repair and maintain

26 (1) A landlord must

(a) provide and maintain the manufactured home park in a reasonable state of repair, and

(b) comply with housing, health and safety standards required by law.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas.

(3) A tenant must repair damage to the manufactured home site or common areas that is caused by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord is not required to maintain or repair improvements made to a manufactured home site by a tenant occupying the site, or the assignee of the tenant, unless the obligation to do so is a term of their tenancy agreement.

(6) A landlord's obligations under subsection (1) (b) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

[My emphasis on tenant's obligations underlined]

I make no award for recovery of the filing fee.

Conclusion

The 1 Month Notice is set aside, and the tenancy continues at this time. I have issued orders to the tenant with this decision. Failure to comply with my orders may be grounds for the landlord to issue another 1 Month Notice to End Tenancy for Cause.

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: ~~December 12, 2019~~ January 24, 2020

Residential Tenancy Branch