



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC, FFL, MNRL, OPR (landlord)**
 CNR, FFT (tenant)

Introduction

This hearing was reconvened following an adjournment of the February 20, 2020 hearing with a different Arbitrator who, for unforeseen circumstances was unable to complete a decision on the matter. This hearing dealt with applications by both the tenant and the landlord pursuant to the *Manufactured Home Park Tenancy Act* ("the Act").

The landlord applied for:

- An Order of Possession for unpaid rent pursuant to section 48 of the *Act*;
- An Order of Possession for cause pursuant to section 48 of the *Act*;
- A monetary order for unpaid rent and late fees pursuant to section 60 of the *Act*; and
- To recover the filing fee from the tenant for the cost of this application pursuant to section 65 of the *Act*.

The tenant applied for:

- A cancellation of the 10 Day Notices for unpaid rent pursuant to section 39 of the *Act*;
- A cancellation of the 1 Month Notice to End Tenancy for Cause pursuant to section 40 of the *Act*;
- An Order directing the landlord to comply with the *Act* pursuant to section 26 of the *Act*; and
- To recover the filing fee from the landlord for the cost of this application pursuant to section 65 of the *Act*.

The tenant did not appear at the hearing on April 21, 2020 but did attend the original hearing on February 20, 2020. The named landlord, J.K. attended both hearings. The landlord was given a full opportunity to be heard, to present evidence and to make

submissions at the April 21, 2020 hearing. I have no knowledge of any information presented by either party on February 20, 2020 and therefore have not considered it in my decision.

J.K. confirmed that an information officer with the Residential Tenancy Branch had contacted him to explain that unforeseen circumstances would prevent the original arbitrator from completing the decision on the matter presently before me. On April 9, 2020, separate notices of adjournment were sent to both the landlord and the tenant via email. No interim decision was issued to the parties and no instructions were provided to the parties regarding service of documents or notices of hearing.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Pursuant to Rule 7.3, the April 21, 2020 hearing was conducted without the participation of the tenant.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession? If not, should the tenancy continue?

Is the landlord entitled to a Monetary Award?

Should the landlord be directed to perform repairs to the unit?

Can either party recover the filing fee?

Background and Evidence

The landlord explained this tenancy began in “approximately 2001 or 2002”. Rent is \$279.00 per month.

The landlord sought an order of possession based on a series of 10 Day Notices to End Tenancy for Unpaid Rent (“10 Day Notice”) he had issued to the tenant along with a 1 Month Notice to End Tenancy for Cause, (“1 Month Notice”). The landlord also applied for a monetary award of \$10,296.00. The landlord issued the 10 Day Notices as follows:

1. December 12, 2019 to tenant M.S. for \$9,960.00 in unpaid rent;
2. December 23, 2019 to tenants M.S. and B.S. for \$9,960.00 in unpaid rent;
3. January 9, 2020 to tenants M.S. and B.S. for \$270.00 in unpaid rent; and
4. February 11, 2020 to tenants M.S. and B.S. for \$10,540.00 in unpaid rent.

The 1 Month Notice to End Tenancy for Cause ("1 Month Notice") was dated December 23, 2019 and the landlord cited the following reasons for its issuance:

- Tenant is repeatedly late paying rent;
- Tenant has allowed an unreasonable number of occupants in the site;
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord and/or put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property, adversely affect(ed) the quiet enjoyment, security, safety or physical well-being of another occupant and/or jeopardize the lawful right or interest of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the property park;
- Tenant knowingly gave false information to the prospective tenant or purchase of the property/park;
- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order; and
- Tenant has assigned or sublet the site without the landlord's written consent.

The landlord explained in his application that he sought the monetary award of \$10,296.00 for unpaid rent. In his evidentiary package the landlord included a typed, 'Record of accounts owing, Pad C-8, [redacted]', dated January 30, 2020. This included an account for allegedly unpaid rent from March 2017 to February 2020.

The tenant applied for a cancellation of these notices and amended her application on January 8, 21 & 31, 2020, and February 18, 2020 accordingly. In her January 31, 2020

amendment the tenant applied for an Order directing the landlord to make repairs to the property, specifically the sewer connection.

Both parties submitted significant written submissions as part of their evidentiary packages. The landlords submitted documentation dated January 31, 2020 marked 'Statement of Facts' which outlined their argument for the validity of the Notices to End Tenancy. Among the arguments presented was information regarding the tenant's alleged actions in evading the landlords, the transfer of the manufactured home site to her son contrary to the regulations of the Park and a description of the tenant's alleged bothersome actions towards other tenants and the property.

The tenant meanwhile submitted a hand-written document dated February 6, 2020 which presented her description of event. She alleged cash payments were made throughout the tenancy and that the landlord had failed to produce receipts for these payments. The tenant's submissions detail some personal issues with the landlord and repeatedly highlight the failure of the landlord to provide receipts for rent payments. Further, the tenant disputed all portions of the 1-month notice explaining she suffered from significant anxiety and lived on her own, therefore could not have disturbed the landlord or the other occupants as described on the notice. The tenant acknowledged transferring the ownership of her home to her son saying she ceded guardianship of her personal assets to him due to a brain injury. No further details or bill of sale regarding the transfer of ownership were provided.

A second hand-written submission was provided in her evidence package dated February 4, 2020 in which the tenant outlined issues with the property, and reasons for seeking the repairs.

When asked at the hearing to explain the large amounts cited on the four, 10 Day Notices and in the application for a monetary award, the landlord acknowledged that rent had not been collected for a significant period of time, however, he cited issues with his wife's health, the tenant's avoidance tactics and the tenant's actions in blaming her own son for the lack of rent collection. The landlord said, "it slipped through the cracks" and he argued that he took immediate steps to rectify the matter as soon as he became aware of the non-payment of rent issue. An incomplete series of receipts dated between 2006 and November 2016 were produced by the landlord in evidence. The final receipt notes, "Rent from Nov 01, 2016 to February 28, 2017".

The landlord argued that the issuance of the consecutive 10 Day Notices was the result of conversations with information offers from the Residential Tenancy Branch. His

December 12, 2019 notice listed only tenant M.S. as the recipient, while the proceeding notices had listed both M.S. and B.S. Furthermore, the landlord acknowledged issuing the January 9, 2020 notice with the wrong figure cited in the 'amount owing' box, having listed \$270.00 outstanding (which the tenant paid on January 14, 2020) rather than the correct monthly rate of \$279.00. The landlord said this amount paid was not put towards rent but rather late fees.

A document submitted into evidence [edited and condensed below] by the landlord dated January 30, 2020 notes rent owing as follows:

2017 - \$2700.00 for rent arrears

2018 - \$2240.00 for rent arrears

2019 - \$2970.00 for rent arrears

March 01, 2017, to present day owing, including Feb.2020.

March 01, 2017, to Dec. 2017 – 10 months @ \$270.00. Total \$2700.00

Jan. 01, 2018, to Dec. 2018 – 12 months @ \$270.00. Total \$3240.00

Jan. 01, 2019, to Dec. 2019 – 12 months @ \$279.00. Total \$3348.00

Jan. 01, 2020, to Feb. 2020 – 2 months @ \$279.00. Total \$558.00

Analysis – 10 Day Notices to End Tenancy

Starting December 2019, the landlord issued four different 10 Day Notices. I will first analyse the Notices dated December 12 & 23, 2019 and February 11, 2020. I will then turn my attention to the 10 Day Notice issued January 9, 2020.

The landlord acknowledged that rent had not been collected in its entirety from March 2017 through to February 2020. The landlord stated that this had been allowed to happen because his wife's medical issues (who was charged with collecting rents for the pad in question), due to the tenant's evasive actions and because of a question surrounding the transfer of ownership to the tenant's son.

Residential Tenancy Policy Guideline #11 states as follows, "In order to be effective, a notice ending a tenancy must be clear, unambiguous and unconditional. A Notice to End Tenancy given by the landlord must also be in the form approved by the Director of

the Residential Tenancy Office.” I find that while the three notices issued on the dates cited above are on the approved form and meet some of the requirements of section 45 of the *Act*, they failed to provide the tenant with clear and unambiguous information as contemplated by *Policy Guideline #11* and section 45(d) which requires a landlord to “state the grounds for ending the tenancy.”

The amounts sought by the landlord in the notices are \$9,960.00 and \$10,540.00. After reviewing the ledgers put forward by the landlord in evidence, I find it difficult to ascertain which amounts are outstanding due for unpaid rent. In one instance the landlord has noted that rent arrears of \$2240.00 for 2018, however, below on the same ledger they note “12 months @ \$270.00 [for a] total [of] \$3,240.00”. Similarly, they list 2019 rental arrears of \$2970.00 and below state “12 months @ \$279.00 [for a] total [of] \$3348.00”. At the bottom of their ledger they cite figure of \$10,296.00 which is inclusive of reductions related to payments received in January 2020 and late fees.

While the landlord sought \$10,296.00 in his application for a monetary award which allegedly reflected unpaid rent, the 10 Day Notice issued on February 11, 2020 notes a figure of \$10,540.00. This difference of \$244.00 does not seemingly reflect unpaid rent of \$279.00 for February 2020. I find the information related to unpaid rent is confusing and inconsistent. For these reasons, I find the 10 Day Notices issued on December 12, 2019, December 23, 2019 and February 11, 2020 fail to meet the requirements of section 45(d) directing a landlord to “state the grounds for ending the tenancy” and are therefore invalid and dismissed without leave to reapply.

In addition to the above discussed Notices, the landlord issued a 10 Day Notice on January 9, 2020. By the landlord’s own admission the amount cited on this Notice was incorrect and requested a payment of \$270.00 in unpaid rent, rather than the actual rent amount of \$279.00. The landlord explained this Notice was issued on January 9, 2020 and the tenant made a payment of the entire amount listed on the Notice on January 14, 2020. Pursuant to section 39(4)(a) of the *Act* the tenant has caused the notice to have no effect because they have paid the overdue rent within five days of receiving the Notice. For these reasons, I dismiss the 10 Day Notice issued January 9, 2020 without leave to reapply.

Analysis – 1 Month Notice

On December 23, 2019, the landlord issued a 1 Month Notice listing eight reasons for its issuance. Those reasons are examined in detail below.

Tenant is repeatedly late paying rent;

Residential Tenancy Policy Guideline #38 provides direction on what is to be considered with the issue of repeated late payments of rent. It states, "A landlord who fails to act in a timely manner after the most recent late payment may be determined by an arbitrator to have waived reliance on this provision." I find that this notice was issued in relation to the "late payments" of rent beginning in March 2017. Furthermore, it was issued in conjunction with a 10 Day Notice citing unpaid rent of \$9,960.00, when no previous warnings of unpaid rent had been issued. I find this amounts of a waiver by the landlord to rely on this provision. I therefore, dismiss this portion of the 1 Month Notice.

Tenant has allowed an unreasonable number of occupants in the site;

While some evidence was presented regarding the presence of the tenant's children in the manufactured home, there was no indication that these persons ever exceeded the capacity of the home or made the manufactured home unfit for occupation. For these reasons, I dismiss this portion of the 1 Month Notice.

Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord and/or put the landlord's property at significant risk;

and

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the property park;

A significant amount of information was provided by the landlord in his evidentiary package regarding these aspects of the Notice. Specifically, the landlord cited the presence of "uninsured derelict vehicles obstructing the roadway, causing people to dodge them, or other driving on well kept yards of other tenants, and could very well hinder emergency vehicle access during winter months of heavy snow removal, as well as the extra time and cost to me I have to make to ensure the roadway remains clear." The landlord also notes, "The lot is unkept, untidy, unmanaged and outside maintenance of the mobile is in dire need of attention. This brings my insurance rates up, and property values down."

I find this evidence does not support of the allegations raised by the landlord in the Notice to End Tenancy. The landlord has not produced any letters from neighbouring

occupants describing issues with the property in question, he has not submitted any photographs demonstrating how the right-of-way is blocked by the presence of vehicles on the property and he has not provided evidence to support his conclusion that his insurance rates have increased as a result of the “unkept and untidy” property. For these reasons, I place little weight on the reasons contained in his written submissions and find they do not meet the burden of proof required to show the tenant disturbed the property or its occupants as described on the Notice. I therefore dismiss these portions of the Notice.

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property, adversely affect(ed) the quiet enjoyment, security, safety or physical well-being of another occupant and/or jeopardize the lawful right or interest of another occupant or the landlord;

Residential Tenancy Policy Guideline #32 notes, “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...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.” After having reviewed the landlord’s evidentiary package, I find no evidence supporting his position that the tenant had engaged in illegal activity. The landlord did not cite any specific law or bylaw of which the tenant had run afoul and failed to explain how any of the tenant’s actions were an offence. For these reasons, I dismiss this portion of the landlord’s Notice.

Tenant knowingly gave false information to the prospective tenant or purchase of the property/park;

Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order; and

Tenant has assigned or sublet the site without the landlord's written consent.

I find no evidence that a previous order was issued to the tenant, nor do I find any information related to a prospective tenant or purchaser. The landlord has provided some evidence that there may have been a transfer of ownership of the manufactured home and for this reason, he feels that a sublet of the site has occurred without his written consent.

Section 28 of the *Act* states;

28 (1)A tenant may assign a tenancy agreement or sublet a manufactured home site only if one of the following applies:

- (a) the tenant has obtained the prior written consent of the landlord to the assignment or sublease, or is deemed to have obtained that consent, in accordance with the regulations;
- (b) the tenant has obtained an order of the director authorizing the assignment or sublease;
- (c) the tenancy agreement authorizes the assignment or sublease.

While the tenant does not appear to have obtained prior written consent of the landlord to assign or sublease the unit, or an order of the director authorizing the assignment or sublease, absent a copy of the tenancy agreement, I am unable to determine whether the tenancy agreement authorizes the assignment or sublease. Rule of Procedure 6.6 states, “the onus to prove their case is on the person making the claim...the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.”

As the landlord has failed to produce a copy of the tenancy agreement showing that the tenant was not authorized to assign or sublease the property, I find they have not met the onus of proof pursuant to Rule 6.6. For this reason, I decline to uphold this portion of the landlord’s 1 Month Notice.

The Landlord’s 1 Month Notice is dismissed without leave to reapply.

Analysis – Landlord’s Application for a Monetary Award & Tenant’s Application Directing the Landlord to Comply with the Act

Residential Tenancy Rule of Procedure 6.2 states, “The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application...The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

This case was initially heard by an arbitrator who received testimony from both parties. Due to unforeseen circumstances, that arbitrator was unable to render a decision and

the case was completed before me. There was no record or transcript of the party's testimony at the first hearing of February 20, 2020 and the tenant did not attend the hearing on April 21, 2020.

The email generated by the RTB contained no information regarding service of documents and there is no indication that the tenant received the email notice of the April 21, 2020 hearing. There is nothing in the email explaining to the parties that the information provided in the first hearing of February 20, 2020 would not be considered by the new arbitrator. I am therefore concerned the tenant did not understand her testimony from the first hearing would not be considered by a new decision maker who had no access to any notes or testimony from that hearing. This would be a breach of natural justice and procedural fairness.

I am therefore unable to render a decision regarding the landlord's application for a monetary award without the tenant's participation and dismiss this portion of their application with leave to reapply. Similarly, I find I am unable to adequately consider the tenant's application for repairs to the rental unit and dismiss this portion of their application with leave to reapply.

Both parties must bear the cost of their own filing fee for this matter.

Conclusion

As neither party were successful in their application, they must each bare the cost of their own filing fee.

The 10 Day Notice dated December 12, 2019 is dismissed without leave to reapply.

The 10 Day Notice dated December 23, 2019 is dismissed without leave to reapply.

The 10 Day Notice dated January 9, 2020 is dismissed without leave to reapply.

The 10 Day Notice dated February 11, 2020 is dismissed without leave to reapply.

The 1 Month Notice dated December 23, 2019 is dismissed without leave to reapply.

The landlord's application for a monetary award is dismissed with leave to reapply.

The tenant's application for repairs to the rental unit is dismissed with leave to reapply.

This tenancy shall continue until it is 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 *Manufactured Home Park Tenancy Act*.

Dated: April 29, 2020

Residential Tenancy Branch