Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Crystal River Court Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenants, application #1: CNC, FF
For the tenants, application #2: CNC, FF
For the landlord: OPC, FF

Introduction

This hearing was convened as the result of the multiple applications of the parties for dispute resolution seeking remedy under the Manufactured Home Park Tenancy Act (Act).

The tenants applied on January 13, 2021 for the following:

- an order cancelling a One Month Notice to End Tenancy for Cause (Notice) issued by the landlord; and
- to recover the cost of the filing fee.

The tenants applied again on January 28, 2021 for the following:

- an order cancelling a One Month Notice to End Tenancy for Cause (Notice) issued by the landlord; and
- to recover the cost of the filing fee.

The landlord applied on February 9, 2021 for the following:

- an order of possession of the manufactured home site pursuant to a One Month Notice to End Tenancy for Cause (Notice) served to the tenants; and
- to recover the cost of the filing fee.

The tenants, their legal advocate (advocate), and the landlord attended the hearing.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Tenants' applications: Are the tenants entitled to orders cancelling the two Notices issued by the landlord and to recover the cost of the filing fees?

Landlord's application: Is the landlord entitled to order of possession of the manufactured home site and to recover the cost of the filing fee?

Background and Evidence

I heard evidence that the tenancy here began on June 15, 2018, for a monthly pad rent of $650. I also heard evidence that the tenants are not living in the park currently and have not for at least a year.

The advocate submitted that the tenants filed two applications because the landlord served two Notices.

The evidence showed that the landlord served the first Notice on January 4, 2021, and later served an amended Notice due to an inadvertent error, listing an incorrect cause. The second Notice removed the cause referring to an illegal activity, inserted an additional cause, along with the remaining two causes which were also on the first Notice.

The consensus of the parties was that the hearing would proceed on the second Notice issued by the landlord, as that Notice amended and replaced the first Notice.

The landlord submitted evidence that the second Notice was served to the tenants on January 23, 2021, by registered mail and by attaching it to the tenants' door. The tenants confirmed receiving the Notice on that date, on the door. The effective vacancy date listed on the Notice was February 23, 2021.

The reasons stated on the Notice to end tenancy were that:

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the tenant has not done the required repairs of damage to the site; and
- that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The parties were advised that the landlord did not have to prove every cause listed on the Notice, as it was sufficient to prove only one cause.

The tenants' evidence referred to a previous Decision, which is listed on the style of cause page of this Decision. The evidence showed that as of the date the tenants' evidence was received, the Decision of another arbitrator had not been made.

Due to the reference of the previous Decision, I have now read that Decision, which was made on February 3, 2021, as I found it to be relevant to this Decision.

Landlord's relevant submissions –

The landlord submitted that the tenants have violated several material terms on their written tenancy agreement, and have been repeatedly been issued written warnings, beginning in 2019.

More specifically, the landlord submitted that the tenants agreed, on their written tenancy agreement, that they will strictly comply with the Park Rules, which was a material term of the tenancy. Referenced was section 10 of the written tenancy agreement. Filed into evidence was the written tenancy agreement and addendums.

The landlord submitted that the addendum states that the tenants must undertake the work required and follow the Rules for the Park if they are to own a home in the Park.

The landlord submitted that the tenants were required by addendum 5(ii) to undertake and complete, by November 30, 2018, paving "the driveway with asphalt to a width of

19 feet, a maximum length of 30 feet and a compacted depth of at least 2 ½ inches, Rule A.4 and B.11". The work required using a contractor approved by the landlord.

The landlord submitted that the tenants were in violation of several Park rules, in particular here, Rule 4, which stated that the tenant shall enter into a contract with a contractor acceptable to the landlord to pave the driveway and parking area and to grade the pad site so it will drain to surrounding drainage courses. The work was to be done within three months of the home arriving in the Park. Filed into evidence were the Park Rules.

The landlord submitted that he personally met with the tenants prior to the tenancy beginning and read every clause of the written tenancy agreement and the addendums, including all the Rules for the Park, which was also listed as addendum 2. The tenants initialed each page.

The landlord submitted that he wrote to the tenants on September 23, 2019, requesting them to pave their driveway by October 31, 2019, and again on September 28, 2019, at their request, to help them understand what was required. The landlord submitted the park managers encouraged and helped the tenants in having the work done correctly.

The landlord submitted the tenants ignored the landlord and park manager, and poured a concrete slab as a driveway, against the tenancy agreement and Park Rules. The landlord submitted that the concrete driveway was not at the correct elevation and would re-direct rainwater under the skirting of a neighbouring pad site.

The landlord submitted that he wrote to the tenants on November 21, 2019, and gave them until December 31, 2019 to remove the slab. The tenants failed to remove the slab then or during the Spring of 2020, the landlord wrote to the tenants on May 29, 2020 warning them that if the slab was not removed, he would have it removed, according to the landlord. The landlord confirmed that he had the slab removed.

Filed into evidence were copies of the communications.

The landlord submitted that the slab and its removal was the subject of previous hearings. The landlord quoted from the previous Decision, which is referenced on the style of cause page of this Decision, the following:

> *When reviewing the totality of the submissions before me, the consistent and undisputed evidence is that the tenancy agreement required that the driveway be*

paved with asphalt, that any alterations to the site required J.N.'s written authorization, and that a contractor must be approved by J.N. in writing prior to any work commencing."

The landlord submitted that during and between the hearings, they offered to help the tenants to install a proper driveway, but the tenants rejected their offers.

It is noted that information reflected on the previous Decision shows that the hearing on the tenants' application, began on October 15, 2020, was adjourned, and reconvened on January 4, 2021. The final Decision was entered on February 3, 2021.

The landlord submitted as of the day of the hearing, the driveway is not paved.

Tenants' relevant submissions –

The advocate submitted that the landlord has provided not one example of a material term being breached and none have been identified as a material term. The advocate submitted that there were no warning letters.

The advocate submitted that the driveway and its removal were the subjects of a prior hearing and once the tenants receive the funds ordered by the other arbitrator and the snow and ice melts, the tenants will get the approval for the asphalt driveway.

The advocate denied that the terms referred to were material.

Filed into evidence were written submissions, much of which appeared to be the evidence used in the parties' previous hearing and copies of photographs.

Analysis

Based on the foregoing, relevant evidence, and on a balance of probabilities, I find as follows:

Tenants' applications –

Section 47(2) provides that a One Month Notice must end the tenancy effective on a date that is not earlier that one month after the date the Notice was received and the day before the day in the month that rent is payable. In other words, the landlord must give the tenant a clear calendar month's notice.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act. Therefore, I find that the Notice effective date of February 23, 2021, listed on the second Notice is automatically corrected to February 28, 2021.

Once the tenants disputed the One Month Notice in accordance with the timeline provided for pursuant section 47 of the Act, the burden of proof reverts to the landlord to prove that the One Month Notice is valid and should be upheld. If the landlord fails to substantiate the One Month Notice is valid, it will be cancelled, and will have no force or effect.

After considering all of the relevant evidence submitted prior to and at this hearing, I find that the landlord has provided sufficient evidence to prove at least one of the causes listed on the Notice.

While extensive evidence of all three causes was heard at the hearing, including an alleged breach of multiple material terms, in the course of consideration of the evidence, I determined that the landlord has submitted sufficient evidence to show the tenants have breached at least one material term and have not corrected it, after written notice to do so.

I therefore did not refer to or include evidence relating to the other two causes listed on the Notice or alleged breaches of other material terms.

Section 47(h) of the Act provides that a landlord may issue a Notice to End Tenancy for Cause where the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In this case, the undisputed evidence is that the tenants have not hired a contractor approved by the landlord to pave the driveway and have not paved the driveway, although they were required to do so by November 30, 2018, as per the tenancy agreement.

I find it clear the tenants were aware that this particular term was a material term, as they signed the written contract with very specific language that compliance with the Park Rules was a material term, in section 10 of the written tenancy agreement. Additionally, the tenants agreed by way of their signatures that they understood a breach of the terms of Section 10 may result in the termination of the tenancy.

Included in the addendum, the tenants were required to pave the driveway with asphalt to a width of 19 feet, a maximum length of 30 feet and a compacted depth of at least 2 ½ inches, with specific reference to Park Rules 4 and 11.

Included in the Park Rules, which was also listed as addendum 2, the tenants were required to pave the driveway by a contractor approved by the landlord.

I find on a balance of probabilities that the terms referred to by the landlord as to the requirement of the tenants to pave an asphalt driveway to the required grade and by an approved contractor were material.

I cannot accept that the tenants had any misunderstanding about the materiality of these terms, due to the many written requests to them by the landlord since 2019 to comply with this and other terms and by their signatures and initials on each page of the tenancy agreement and addendums. I find it abundantly clear the tenants were aware that these terms were material.

I also find the tenants had more than ample time to comply with the material terms of the written tenancy agreement and have failed to do so.

Given the above, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenants have breached at least one material term and have not corrected it, after written notice to do so.

As I have found that the Notice is valid on one ground, it is not necessary for me to consider the other alleged causes. I therefore **uphold** the landlord's One Month Notice dated January 23, 2021.

For this reason, I **dismiss** the tenants' two applications requesting cancellation of the two Notices, without leave to reapply, as I find the One Month Notice dated January 23, 2021 valid, supported by the landlord's evidence, and therefore, enforceable. I **order** the tenancy ended on the corrected effective date of that Notice, or February 28, 2021.

Under Section 48(1)(b) of the Act, I grant the landlord an order of possession of the manufactured home site, effective **two (2) days after service on the tenants.**

The order of possession is included with the landlord's Decision. Should the tenants fail to vacate the manufactured home site pursuant to the terms of the order after it has

been served upon them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are cautioned that costs of such enforcement for removal are recoverable from the tenants.

In recognition that it is highly unlikely that the tenants could comply with the two day timeline, the parties are encouraged to agree to arrange another date on which the tenants would comply with this Decision.

Landlord's application –

As the landlord has been issued an order of possession of the manufactured home site on the tenants' application, I find it was not necessary to file an application seeking the order.

The landlord has the same burden of proof to provide sufficient evidence to support the Notice on the tenants' application. If the landlord successfully submitted sufficient evidence to support the Notice, the landlord would be granted the order on the tenants' application, by operation of section 48 (1) of the Act.

I therefore decline to grant the landlord recovery of their filing fee.

Conclusion

The tenants' two applications are dismissed, without leave to reapply, for the reasons listed herein.

The landlord is granted an order of possession of the manufactured home site, effective two (2) days after service on the tenants.

The landlord's application was determined to be not necessary, although they are successful in their request for an order of possession. As a result, the filing fee was not granted to the landlord.

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*. Pursuant to section 70 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 19, 2021