Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

The tenant applied for an order to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 40 of the *Manufactured Home Park Tenancy Act* (the "Act"). The tenant also seeks to recover $100.00 for the cost of the filing fee, pursuant to section 65 of the Act.

Both parties, along with a legal advocate for the tenant, attended the teleconference hearing on April 20, 2021. No issues of service were raised by the parties, the parties were affirmed, and Rules 6.10 and 6.11 of the *Rules of Procedure,* under the Act, were explained. Finally, it should be noted that I have corrected the number of the manufactured home site from 12 to 11; this is reflected on the cover page.

Issues

1. Is the tenant entitled to an order to cancel the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began when the tenant inherited the property from her mother (who had lived there since 2008) in 2014. Since 2015, the property has been occupied by the tenant's family, but not the tenant herself. Monthly rent is $486.00. The landlord in this dispute took ownership of the park, and became the park's landlord, in February 2020.

On January 20, 2021, the landlord served the Notice on the tenant by way of registered mail. A copy of the three-page Notice is in evidence. Page two of the Notice gave the following reasons for it being issued: (1) breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and, (2) the tenant has assigned or sublet the site without landlord's written consent.

Under the "Details of Causes(s)" section on page three of the Notice, it states:

> Tenant has consistently flaunted the well established rules of the Park without regard to the impact to the Park and its other residents:
> 1.) The tenant has built additional structures without regional permits or permission of the landlord.
> 2.) The tenant to my knowledge has rented the unit without the proper approval of previous landlords.
> 3.) After repeated requests the tenant has consistently refused to clean up the site around their mobile home.

Regarding the first reason, the landlord gave evidence that this is grounded on the tenant's failure to clean up the site. He argued that the tenant has been repeatedly in breach of park rules, municipal by-laws, and the tenancy agreement. The tenant "needs to maintain a healthy, clean, sanitary, and attractive" site, which he alleges she has not.

The landlord further testified that he has given her several written notices: in May, October, November, and December 2020, and again in January and February of 2021. The notices warned the tenant about the possibility of eviction. Despite these notices, the tenant has "shown sheer contempt" for him, the rules, the Act, and the bylaws.

A copy of the park rules (updated in 2017) was submitted into evidence. A copy of the District of Sechelt Mobile Home Park Bylaw No. 37, 1989, was also provided.

On October 26, 2020, the landlord emails the tenant, and says, in part:

> […] lean-to sheds you have attached to the side of your mobile home that do not confirm with the Park Rules (picture attached) and I requested you remove them. To date you have ignored my request. These structures are illegal, messy and do not contribute to the general attractiveness or neatness of the Park. In addition, they have not been done with the appropriate permits or permission of the Landlord.

On December 10, 2020, the landlord sent another letter to the tenant. In this letter, the landlord writes (landlord's emphasis):

> I have previously requested that you follow the Park Rules as outlined below yet you simply ignore my requests. If you do not have the wood and metal shed structures, firewood, all other belongings and debris removed from the yard and cleaned up in accordance with the Rules by January 5th I will move to have you evicted from the Park.

In both the October and December correspondence the landlord includes an excerpt of the park rule that applies (I will assume that the pronoun "his" should read as "their"):

> B. MAINTENANCE OF LOT AND HOME
>
> 1. Tenant must maintain his lot and home, its facilities and equipment, in good repair and in a neat, clean, safe and sanitary condition.
> Any accumulation of algae on exterior wall surfaces must be removed to maintain clean condition of home.
>
> 2. Tenant must be aware of the park as a whole, and to enhance the visual impact each lot must be landscaped neatly and maintained.

On January 12, 2021, the landlord emails the tenant and states the following:

> After repeated requests to clean up the area around your trailer you have refused to comply with well established park rules.
> This is disrespectful of your neighbours and the park in general. In addition, you have consistently flaunted other park rules.
> As such I am now requesting you provide copies of the regional or municipal building permits you obtained prior to constructing the additional structures onto the mobile home plus the permission of the landlord to do so including the storage shed.
> Lastly, please provide evidence of landlord approval allowing you to rent your mobile home.

On February 21, 2021, the landlord sends additional correspondence to the tenant, pointing out that the tenant's accessory buildings and additions are in contravention of the municipal mobile park bylaws. It should be noted that the landlord provided into evidence a total of eleven photographs of the mobile home.

Regarding the second reason, the landlord testified that the tenancy agreement is very clear: one is now allowed to sublet. He referred me to the clause in the tenancy agreement about this restriction.

The tenant's legal advocate began by cross-examining the landlord about the new tenancy agreement that the landlord was having everyone else in the 30-site park sign. While I will not reproduce much of the testimony with respect to this cross-examination, suffice to say that the advocate argued that the Notice was served in response to the tenant's refusal to sign the proposed new agreement. There are, presumably, issues with the proposed tenancy agreement, including questions as to whether its terms comply with the Act or the Act's associated regulations.

Given that the issues before me have to do with the Notice, I will not address any matters dealing with the terms of the proposed tenancy agreement. Before moving on, however, I must point out that the tenant is not required under either the Act or the *Manufactured Home Park Tenancy Regulation,* B.C. Reg. 481/2003, to sign a new tenancy agreement with the landlord.

The tenant and the advocate provided submissions and testimony regarding the allegations of the breach of a material term of the tenancy agreement. They testified and submitted that the previous landlord agreed to allow the tenant to sublet to her family since 2015. While there is no paperwork related to this previous consent, the subletting was permitted by the previous landlord, and the new landlord cannot now disapprove of those arrangements. The advocate referred to an email dated February 18, 2020, in which the landlord indicates that he has no problem with the subletting continuing, as long as the tenant signs a new tenancy agreement.

The landlord then provided his rebuttal, much of which was a reiteration of his direct testimony. Though, he stressed in his closing arguments that "I just want to give my [park] tenants a safe, clean, and attractive place to live." He added that he is not interested in having a park that has the semblance of "trailer trash."

The tenant and her advocate then indicated that they would like to respond to the landlord's rebuttal evidence. The advocate requested an adjournment, and the tenant remarked that they would like to submit additional evidence, primary in the form of photographs that would presumably paint a more positive picture of the site. I declined to grant an adjournment and stated that no further evidence would be permitted; the tenant's application for dispute resolution was made on January 26, 2021, and thus there was more than sufficient time to submit evidence such as photographs.

At this point, it is important to point out that hearings before the Residential Tenancy Branch are scheduled for one hour (unless parties, or an arbitrator, specifically requests a longer duration in advance of a hearing). This hearing began promptly at 9:30 AM and ended at 10:39 AM. As I explained to the parties earlier in the hearing, the next hearing over which I had conduct began at 11:00 AM. All of which is to say: time is precious and limited in such hearings.

It is not lost on me, though, that parties in an administrative hearing must be afforded the fundamental principle and right known as *audi alteram partem.* Or, in plain English, a party should not be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them.

In carefully considering the landlord's rebuttal evidence and closing submissions, I determined that further response by the tenant would likely not provide any useful additional evidence that was not already given during her testimony. At some point, ongoing, back-and-forth rebuttal must come to an end in the interests of justice. I further conclude that there is no prejudice to either party by my not adjourning this matter.

For these reasons, I declined to grant an adjournment. Should either party disagree with this finding their relief is to apply for judicial review.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The grounds on which the Notice was given are based on sections 40(1)(g) and 40(1)(h) of the Act:

(1) breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, and

(2) the tenant has assigned or sublet the site without landlord's written consent.

A. Sublet

I will address the second ground first, namely, that of the landlord's contention that the tenant has sublet the site without the landlord's written consent.

As a starting point, some definitions are in order. "Tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities (section 1 of the Act).

"Landlord" is defined as "the owner of the manufactured home site" which includes "the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a) [that is, the former landlord]."

While there does not appear to be any documentation on file that points to the former landlord's *written* consent to permit the tenant to sublet, it is clear that the former landlord permitted the tenant to sublet as far back as 2015. The present landlord, being the successor in title to the tenancy agreement—including any written or oral, express or implied terms of that tenancy agreement—assumes and accepts the terms of the tenancy agreement that existed at the time he purchased the park in 2020.

Thus, the tenant, by virtue of being permitted to sublet by the previous landlord, is permitted to continue to sublet. Indeed, the landlord apparently had no issues with the tenant's subletting (except for the condition that she sign a new tenancy agreement).

Finally, while the previous landlord does not appear to have given written consent for the tenant to start subletting in 2015, there is no evidence that the landlord ever took any action demonstrating his opposition to this arrangement. In other words, the previous landlord – and by extension the current landlord – is estopped from taking action against the tenant's subletting. By all accounts, both the previous and the current landlord had no problem with the subletting.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the second ground for issuing the Notice.

B. Breach of Material Term

At the start, it is recognized in section 32(1) of the Act that a landlord "may establish, change or repeal rules for governing the operation of the manufactured home park."

Rules must, however, not be inconsistent with the Act or the regulations (section 32(2) of the Act). Further, it goes without saying that park rules, when properly promulgated, may be considered to be a material term of a tenancy agreement.

Section 30 of the *Manufactured Home Park Tenancy Regulation* establishes the framework and requirements governing park rules. It reads as follows:

> (1) The park committee or, if there is no park committee, the landlord, may establish, change or repeal a rule if it is reasonable in the circumstances and if the rule has one of the following effects:
>
> (a) it promotes the convenience or safety of the tenants;
> (b) it protects and preserves the condition of the manufactured home park or the landlord's property;
> (c) it regulates access to or fairly distributes a service or facility;
> (d) it regulates pets in common areas.
>
> (2) If there is a park committee, the rules must be established, changed or repealed according to the procedure set out in sections 22 *[park committee decisions]* and 23 *[vote by landlord and tenants]*.
>
> (3) A rule established, or the effect of a change or repeal of a rule changed or repealed, pursuant to subsection (1) is enforceable against a tenant only if
>
> (a) the rule applies to all tenants in a fair manner,
> (b) the rule is clear enough that a reasonable tenant can understand how to comply with the rule,
> (c) notice of the rule is given to the tenant in accordance with section 29 *[disclosure]*, and
> (d) the rule does not change a material term of the tenancy agreement.

At the outset, I must dismiss the landlord's stated ground in the Notice referring to "regional permits." The onus is on the landlord to prove that the structures referred to require permits from the municipality, and he has failed to prove this requirement.

Turning now to the specific park rules under which the landlord seeks enforcement:

> B. MAINTENANCE OF LOT AND HOME
>
> 1. Tenant must maintain his lot and home, its facilities and equipment, in good repair and in a neat, clean, safe and sanitary condition.
>
> Any accumulation of algae on exterior wall surfaces must be removed to maintain clean condition of home.
>
> 2. Tenant must be aware of the park as a whole, and to enhance the visual impact each lot must be landscaped neatly and maintained.

There is no evidence before me to find that the tenant's site is unclean, unsafe, or not sanitary. There is no evidence of rats or other vermin that are often indicative of uncleanliness or unsanitary conditions. There is no evidence, such as witness statements from any of the other tenants in the park, that the tenant's site has caused any unsafe or unsanitary conditions.

Is the site "neat"? One person's mess is another person's neatness. Certainly, it is not lost on me that, at some point, a mess is a mess. However, having carefully looked at the photographs submitted into evidence, only three depict what can only be described as a disheveled exterior. (Granted, the photographs are of mediocre quality, and I can only get a general sense of the property.)

In one photograph, there appears to be a watering can on the ground, and children's bikes under a tarp. A second photograph appears to be of the same exterior area but taken from a higher elevation. Again, depicted are what appears to be buckets laying about and some tarp-covered items. A few more photographs depict much the same.

So, is the site "neat"? I cannot say. The landlord maintains that it is not, while the tenant disputes this. The onus rests on the landlord to prove what is neat and what is not, and why.

However, even if the site is held not to be neat, I do not find that the park rule requiring a tenant to maintain a lot in a "neat" condition to be in compliance with section 30(1)(a) and (b) of the Act, because I am not persuaded that having a "neat" site in any way "promotes the convenience or safety of the tenants [or] protects and preserves the condition of the manufactured home park or the landlord's property."

In the alternative, and if I am incorrect on this application of the Act to the park rules, then I would nevertheless find that the rule does not comply with section 30(3)(b) of the Act, which requires that “the rule is clear enough that a reasonable tenant can understand how to comply with the rule.”

What is “neat”? The rules do not make this clear, and the interpretation is largely within the landlord’s subjective and arbitrary comprehension of neatness. The same issue is repeated in the second part of the rule: “each lot must be landscaped neatly and maintained.”

Quite simply, there is too wide a latitude of interpretation for this park rule to be easily or reasonably understood and complied with. If a park rule is drafted with greater specificity (for example, the tenants may not store any of the following items on their site . . .) then it is more easily understood and therefore easier to comply with. It is also, of course, more enforceable by a well-meaning landlord.

In the absence of finding that the park rule complies with the Act, I must conclude that the rule requiring the site to be “neat” is not a material term of the tenancy agreement.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the first ground on which the Notice was based. There is in evidence nothing for me to find that the tenant has breached a municipal bylaw. And, indeed, if she has, it is not included in the ground for eviction, which is that they breached a material term of the tenancy agreement. There is no evidence that the tenant’s site, or the items and structures around the site, breach any material term of the tenancy agreement or that of a park rule.

For these reasons, I must cancel the Notice. The Notice is of no legal force or effect and the tenancy shall continue until it is ended in accordance with the Act.

On a final note, I am not unsympathetic to the landlord’s interest in maintaining a clean and attractive place for tenants to live. Achieving this goal is a laudable one. However, vague park rules may be a difficult-to-apply tool in trying to reach that goal. Conversely, while the tenant may not reside in the manufactured home or the park, I would strongly encourage her to work with the landlord, wherever possible, to ensuring that the site reflects a well-run park.

Conclusion

The tenant's application is granted. I hereby cancel the One Month Notice to End Tenancy for Cause. The tenancy will continue until ended in accordance with the Act.

As the tenant was successful in her application, I authorize her to deduct $100.00 from the next rent payment to recover the filing fee cost, pursuant to section 72 of the Act.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: April 21, 2021

Residential Tenancy Branch