



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Highview Estates Mobile Home
Park and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for an order to cancel a One Month Notice To End Tenancy for Cause pursuant to section 40.

Both the tenant and the landlord attended the hearing. The landlord acknowledged service of the tenant's Application for Dispute Resolution and stated she had no issues with timely service of documents. The tenant also acknowledged service of the landlord's evidence and stated the same.

At the commencement of the hearing, each party was affirmed to tell the truth and advised that recording of the hearing was strictly prohibited.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The tenant has been living at the manufactured home park since 2006 and became their tenant when they purchased the park on November 30, 2017. Rent is currently set at \$386.00 per month.

On January 21, 2021, the landlord issued a One Month Notice to End Tenancy for Cause ("notice") and sent it via registered mail to the tenant. The landlord testified it was picked up by the tenant on January 27th and provided the tracking number for the mailing as evidence. A copy of the notice was provided as evidence by the tenant. The effective date stated on the notice is February 28, 2021 and the landlord provides two reasons for issuing the notice:

1. *tenant has not done required repairs of damage to the unit /site / property or park;*
2. *breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;*

Under "details of Cause" the landlord wrote:

Repeated Notices regarding: immense mess of home/lot/yard (first contact/notice dating back to Feb 28th, 2020) causing loss of enjoyment to direct neighbours (multiple verbal and written complaints), failing to provide proof of home owners insurance, erecting a structure without Park approval, failing to obtain a building permit from local municipality.

A copy of the February 28th letter was provided as evidence by the landlord. It states:

Your Tenancy Agreement requires regular maintenance and general upkeep of the exterior of your home and lot. Please be advised the following items need to be completed on or before April 1st, 2020:

1. *Items stored between your shed and the wooden fence along the lot line adjoining Unit #[withheld for privacy] need to be removed. These items are improperly stored and have caused the structural integrity of the fence to fail. This fence is leaning dangerously into the adjoining back yard. As per Rules and Regulations - Part (1) section (c) and as per the Manufactured Home Site Tenancy Agreement - Section (10).*

2. *All items that are broken, rotten and/or unused need to be removed. As per Rules and Regulations - Part (1) sections (c).*
3. *All shrubbery/trees/lawns are the responsibility of the home owner to maintain. There are numerous shrubs and vines etc. that need to be pruned back significantly or removed. As per Rules and Regulations - Part (1) section (b).*
4. *Front/side entrance to the home. All items stored incorrectly ie. Boxes, old appliances, plywood pieces, door, partially constructed items, loose recycling etc. These items need to be removed. As per Rules and Regulations - Part (1) section (c).*
5. *Repair, replace or remove the rear deck. While we understand this is a larger project, we will accept a written plan by the April 1st, 2020 date. Any plans need to be submitted to the Park office in writing for approval and contain a completion date. As per Rules and Regulations - Part (1) section (c) and as per the Manufactured Home Site Tenancy Agreement - Section (10).*

A copy of both the Park Rules and Regulations and your signed Tenancy Agreement have been attached to this notice. We appreciate your compliance and prompt attention to these matters. Failure to comply will result in an immediate 1 Month End of Tenancy Notice for breach of Material Terms. Any communication regarding these matters needs to be in written format (email or letter).

The landlord testified the exterior of the tenant's unit has been a "mess" for some time and the yard had lot has been littered with debris for years. The landlord provided multiple photographs of the tenant's exterior and the tenant's yard as evidence of the debris and clutter. The deadline for cleaning up the mess (April 1st) came and went without any improvement. The landlord gave the tenant extra time to deal with the deck on the rear of the property as it was a larger project, but none of the other items listed were done. The landlord also testified that some of the structures erected on the tenant's pad were done without permits or pre-approval from the park. The landlord testified that the municipality must provide permits for any building to be done on the pad and the tenant has not provided any proof of permits to the landlord. Even after the tenant was served with the notice to end tenancy, the tenant has put up a new roof structure, unpermitted and without park approval.

The landlord testified that a new tenant moved into the pad located beside the tenant and sent the landlord a complaint letter about the tenant's yard shortly after moving in. This letter was received on February 22, 2021 and provided as evidence by the landlord.

Lastly, the landlord testified that each of the residents of the manufactured home park are required to provide park management with valid proof of insurance. A notice to all residents advising of this mandatory requirement was sent out in July 2020. The landlord testified she's asked this tenant for it and the tenant has not provided it to her. The landlord submits that the tenant's failure to have insurance puts everyone living in the park at great financial risk.

The tenant gave the following testimony. She is a single mother and she has chronic illnesses. The mess seen in the photographs is firewood she's ordered, and it's covered with a tarp which is weighed down by her children's toys. She's been trying to find someone to hire to build a proper wood shed.

Raccoons got into the old shed and did damage to it and the contents of it. After the raccoons got in, her kids went in and opened boxes, causing the mess to get worse. The tenant has tried to hire people to fix the shed but those plans always fell through. For example, the tenant paid someone to build the shed but he never returned to do the siding.

The other item of debris is from Gyproc from the shed that she had to double bag. There are 6 bags of Gyproc that still need to go.

The tenant testified she is doing the best she can as a single mother. She's reached out to several people to find someone willing to help her in maintaining her manufactured home pad. She hired someone from her church to fix her fence and it ended up costing her double. The guy who ripped out the deck got a better job and the guy she hired for the fence got knee surgery.

The tenant testified that the clutter is now gone. The only thing left is a wheelbarrow full of Gyproc. The entire yard is clean, the fence is fixed and the roof is repaired. The tarps are taken off the wood and the only thing left in the yard is a "fish tote" which belongs to somebody else.

The tenant testified that she's always had insurance but previous management has never requested it from her. She "just got it the other day" from her insurer and she's

requested copies of previous years' insurance. There's never been a break in insurance. She can now provide the landlord with a copy of her current insurance policy although she hasn't yet done so.

Analysis

The landlord provided proof of service to satisfy me she served the tenant with the One Month Notice to End Tenancy for Cause on January 27, 2021 by registered mail. The tenant filed an application to dispute the notice on February 4, 2021, within 10-days as required under section 40(4) of the *Act*.

When a tenant disputes a landlord's notice to end tenancy, the onus is on the landlord to prove the reasons for ending the tenancy were valid at the time the notice was served pursuant to section 6.6 of the Residential Tenancy Branch Rules of Procedure.

I turn first to the breach of the material term that was not corrected within a reasonable time after written notice to do so.

Residential Tenancy Branch Policy Guideline PG-8 [Unconscionable and Material Terms] define a material term as follows:

Material Terms

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. 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.

In the case before me, the material terms identified in the landlord's notice to end tenancy are:

- Messy lot;
- no proof of homeowner's insurance;
- erecting structure without Park approval;
- failure to obtain a building permit from the municipality.

The messy lot was the primary focus of the landlord in this hearing. The parties' obligations to repair and maintain are found at section 26 of the *Act*.

26 Landlord and tenant obligations to repair and maintain

- 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.

I find that the tenant's obligation to keep her pad reasonably clean and sanitary is a material term of the tenancy, since this responsibility is specifically required under section 26 of the *Act*. Further, if multiple owners living in a manufactured home park were to stop maintaining their lots or yards and started to allow debris to accumulate, the park's outward exterior would quickly deteriorate – bringing down property values and making the park less desirable for new residents. Although the tenant has indicated she suffers from disabilities and couldn't find assistance to do the work, the responsibility to keep site reasonably clean and sanitary remains.

On February 28, 2020 the landlord provided the tenant with a written notice to address specific issues regarding the outside of her home that the landlord wanted remediated within one month. I reviewed the photos of the tenant's yard and I find it was reasonable to ask the tenant to have the work completed within the one month requested. In reviewing the letter, with the exception of the request to repair or remove the rear deck, the remainder of the items are for the tenant to simply remove the clutter and debris. Although the tenant has given reasons as to why she couldn't have this work done, I am not satisfied the reasons presented were adequate to justify needing more than a month. I find that the tenant breached this material term

of the tenancy by failing to maintain a reasonably clean and sanitary standard and failed to correct it within a reasonable time after being given written notice to do so.

While the tenant testified that she's been working to get the fences and shed rebuilt and the structures on the property built and repaired, it appears much of the work was being done subsequent to being served with the notice to end tenancy. I must emphasize here that the issues requiring the tenant's attention on the February 28th notice were mostly unrelated to the shed or structures – they were to remove debris and unsightly materials.

I find that the tenancy agreement, at paragraph 11, requires the tenant to carry sufficient insurance to cover his home, accessory equipment and other property against loss or damage from any cause and for third party liability. I am satisfied that the landlord served the tenant with a notice to provide proof of homeowner's insurance in July of 2020 and that the tenant did not do so. Although the tenant testified that she can now provide the proof, I find she did not give it to the landlord, as requested, when requested. I am satisfied that having homeowner insurance is a material term of the tenancy as the failure to carry it could present a significant risk to the landlord and other tenants in the park if the tenant's manufactured home were to suffer a disaster and cause damage to the park or it's neighbours.

For the reasons cited above, I find the tenant breached material terms of the tenancy and failed to correct them within a reasonable time after being given written notice to do so. I uphold the landlord's One Month Notice to End Tenancy for Cause.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

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: May 10, 2021

Residential Tenancy Branch