



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAREER DEVELOPMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On February 8, 2021, the Tenant submitted an Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated January 23, 2021, (“the One Month Notice”).

The Landlord and Tenant appeared at the hearing. The Tenant was assisted by an advocate. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. The parties were informed that recoding the hearing was not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

Both parties testified that the manufactured home park tenancy began on June 7, 2019 and is on a month to month basis. Pad rent in the amount of \$420.00 is due by the first day of each month.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated January 23, 2021. The One Month Notice was sent to the Tenant using

registered mail and was received by the Tenant on January 29, 2021. The Notice has an effective date (the date the Tenant must move out) of March 1, 2021.

The Landlord cited the following reasons for ending the tenancy within the One 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.*
- *Put the Landlord's property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:

- *Damage the Landlord's property.*
- *Jeopardize a lawful right or interest of another occupant or the Landlord.*

Tenant has caused extraordinary damage to the unit/site property /park.

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.

The Landlord testified that the previous owner of the manufactured home was evicted from the manufactured home park. The Landlord stated that the manufactured home was in poor condition, and she permitted the home to remain in the park and be sold to the Tenant based on an agreement that the Tenant would make improvements to the home and lot. The Landlord stated that the manufactured home was sold for \$10,000.00 which was reflective of its condition and state of repair.

The Landlord provided a copy of the tenancy agreement and addendum and testified that the terms and conditions of the tenancy agreement signed by the Tenant includes the following:

- To replace or remove the fencing around the manufactured home pad within 6 months.
- To replace the skirting around the manufactured home.
- To replace the old windows in the manufactured home no later than 4 months from purchase of the home.
- To paint the garden shed within 16 months of purchase.
- To upgrade the entry porch within two months of purchase.

The Landlord testified that she would not have agreed that the manufactured home could remain in the park had the parties not entered into the agreement that the Tenant would make the improvements.

The Landlord testified that the Tenant has not completed even one of the required improvements properly. The Landlord testified that she served the Tenant with warning letters in 2019 and 2020 regarding his failure to complete the repairs/ improvements. The Landlord testified that she has previously issued notices to end tenancy to get the Tenant to comply with the terms of the contract. The Landlord provided additional time to the Tenant, until October 31, 2020, to complete the repair and improvements.

The Landlord provided a copy of three warning letters sent to the Tenant in 2019 and 2020 about his failure to complete the required improvements.

In response to the Landlord's testimony, the Tenant's advocate submitted that the conditions that the Tenant agreed to were not fully understood due to English not being his first language. She submits that the Tenant has a severe language barrier and has been inundated with paperwork from the Landlord. She submits that several factor came into play which delayed the repairs, such as winter weather and the pandemic.

The Tenant's advocate submitted the following on behalf of the Tenant:

- The Tenant made repairs to the fence by reinforcing it, but this is not good enough for the Landlord.
- The Tenant has replaced 3.5 sides of the skirting.
- The Tenant has not replaced any windows because they need to be custom made.
- The garden shed was not painted; however, it has new vinyl siding and does not require painting.
- The Tenant spoke to a building inspector and a building permit is not required to repair the stairs.

The Tenant's advocate submits that all of the Landlords demands took place during the global pandemic and hiring someone was difficult. The Tenant is now connected with senior support to assist him with tidying the yard.

With respect to the notice to end tenancy, the Tenant's advocate points out that the Tenant is not putting the Landlords property at risk; there is no illegal behaviour, and the Tenant is not causing extraordinary damage to the park.

With respect to a breach of a material term, the Tenant's advocate submitted that they agree that the Tenant did not perform the required repairs; however, the parties did not agree that the terms were material terms of the contract and the violations are not serious enough to warrant ending the tenancy.

The Tenant provided testimony that his wife fell ill and passed away. He stated that relevant information was not disclosed on the condition of the home.

The Landlord replied that there was no vinyl siding on the shed when the notice to end tenancy was issued. She testified that section 18 of the tenancy agreement provides that complying with the park rules is a material term of the tenancy.

The Landlord pointed out that fixing the fence does not meet the term of the contract that required the Tenant to replace it or remove it.

Analysis

In the matter before me, the Landlord has the burden to prove that the reasons for ending the tenancy cited in the Notice are valid. Based on the evidence and testimony before me, I make the following findings:

I find that the Landlord and Tenant entered into a tenancy agreement that included terms that the Tenant would make repairs and improvements to the manufactured home and fencing. I find that the terms as set out in the tenancy addendum are clear and provide dates by which the repairs were to be completed.

I find that the Tenant is expected to comply with the terms and conditions of the agreement. I do not accept an excuse that the terms of the agreement were not fully understood by the Tenant. The Tenant should have been diligent on satisfying himself on the condition of the manufactured home prior to purchasing it. The terms of the agreement are clear, and the Tenant agreed to the terms. The Landlord sent warning type letters to the Tenant to further clarify the importance of the contractual agreement and also granted an extension of time for the Tenant to complete the repairs/improvements.

By the Tenant's own admission, the Tenant has not completed the required repairs/improvements. I find that the Tenant has breached the terms of the tenancy agreement. While the tenancy agreement does not specifically say that failure to complete a repair will amount to a material breach of the tenancy agreement, I find that the terms are very important to the overall scheme of the tenancy agreement and are enforceable. The

Landlord wants to enforce the terms. The Landlord has communicated the importance of fulfilling the contract by sending the Tenant warning letters and notices to end tenancy.

I find that terms of the agreement are important enough that they amount to a material term. I accept that the Landlord would not have agreed to permit the manufactured home to remain in the park if the Tenant had not agreed to not make the improvements as provided in the agreement.

I am mindful that the pandemic has made it difficult for everyone to conduct business as usual and may have an impact on hiring tradesmen for construction, ordering windows, or repairs. However, I note that the Tenant signed the agreement and addendum on May 24, 2019. The required repairs / improvements to the entry, windows and fencing were all due to be completed within 6 months, which is prior to the onset of the pandemic.

I find that the Landlord gave the Tenant written notice to comply with the terms of the contract and gave the Tenant a reasonable period of time to comply. The Landlord's patience has ended, and the Landlord is not interested in having the tenancy continue.

The Tenant's application to cancel the One Month Notice is dismissed. The tenancy is ending due to a fundamental / material breach of the tenancy agreement.

Under section 48 of the Act, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 45 regarding form and content, I must grant the Landlord an order of possession for the manufactured home site.

I find that the One Month Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession on the effective date within the One Month Notice; however, since this date has passed, the effective date will be May 31, 2021.

The Landlord is granted an order of possession effective no later than 1:00 pm on May 31, 2021, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenancy is ending due to a fundamental / material breach of the tenancy agreement by the Tenant.

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated January 23, 2021, is not successful and is dismissed.

The Landlord is granted an order of possession for the manufactured home site effective no later than 1:00 pm on May 31, 2021, after service on the Tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 17, 2021

Residential Tenancy Branch