



Dispute Resolution Services

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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 CNC, FF

Introduction

On February 11, 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 February 1, 2021, (“the One Month Notice”).

The Landlord and the Tenant’s advocate appeared at the hearing. 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 Landlord confirmed that he received a copy of the Tenant’s documentary evidence. The Landlord did not provide any documentary evidence to the Residential Tenancy Branch or to the Tenant. The parties were informed that recoding the hearing is 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.

Preliminary and Procedural Matters

The Landlord and the Tenant’s agent indicated that the manufactured home is in the process of being sold to a new owner. Neither party was able to confirm that the sale of the manufactured home had completed. Based on this information, the hearing proceeded.

Issue to be Decided

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

Background and Evidence

Both parties testified that the manufactured home park tenancy began on July 1, 2016 and is on a month to month basis. Pad rent in the amount of \$498.96 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 February 1, 2021. The Landlord cited the following reasons for ending the tenancy within the One Month Notice:

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 stated that clause 10 of the tenancy agreement under Tenants Obligations provides that the Tenant agrees to the following as material terms and that breach of this section may result in termination of the tenancy.

g) that the Tenant will strictly comply with park rules.

The Landlord referred to the tenancy addendum where the Tenant agreed to undertake work and repairs to the home and pad site. The addendum lists replacement of windows, repair siding, hide wiring, install vinyl skirting, removal of lattice in a car port, and painting the trim. The addendum provides that this work is to be completed by September 30, 2016.

The addendum also includes that the Tenant is to inspect the roof and repair as needed. The addendum provides that this work is to be completed by November 30, 2016.

The Landlord stated that the Park Rules provides that decks, steps, skirtings, and gutters must be approved by the Landlord.

The Landlord testified that the Tenant failed to do most of “these things”. The Landlord stated that the Tenant was sent a letter On May 31, 2017 and September 2019 as a reminder and warning about completing the repairs.

In response to the Landlord’s testimony, the Tenant’s advocate submitted that the One Month Notice from the Landlord is not sufficiently clear on the details of cause and this affects the Tenant’s ability to prepare a thorough response.

The Tenant's advocate submits that the Tenant is 65 years old with existing medical conditions.

The Tenant's advocate submitted that the Tenant was to perform cosmetic improvements which is not the same as a requirement to repair for damage to the unit/site or park. He stated that the Tenant has spent thousands of dollars making improvements to the manufactured home.

The Tenant's advocate stated that the tenancy agreement and addendum provide that the Tenant is to inspect and repair the roof if needed. The advocate referred to a February 2021 letter in his evidence from a realtor which indicates the roof the manufactured home is in fine condition.

With respect to a breach of a material term, the Tenants advocate stated that the tenancy agreement is 25 pages and its hard to imagine that every term within it is to be considered a material term.

The Tenants advocate stated that the windows are done, and the siding is done. The Tenant's advocate submitted that the Landlord has not provided any documentary evidence in support of his application and to prove that the improvements have not been completed. He submitted that nevertheless, the Landlord has not issued a letter stating if you don't fix your roof you will be evicted. The Tenant provided photographs showing the exterior and interior of the manufactured home.

The Tenant's advocate stated that there is a history of the Landlord making it difficult for tenants to sell a unit, so that he can purchase it cheap and flip it to make a profit. The advocate submits that the Landlord is evicting vulnerable seniors.

In reply, the Landlord stated that they have a contract for the Tenant to make repairs to damage and the Tenant failed to do it, and the Tenant was given many years.

Analysis

Residential Tenancy Branch Policy Guideline #8 Unconscionable and Material Terms provides the following information on 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.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement.
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

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

The Landlords request to end the tenancy for cause is not successful for the following reasons:

The Tenants advocate submits that the Tenant has performed the required improvements to the manufactured home and site and that repair of the roof is not needed. The Tenant provided photographic images which are black and white and are not entirely clear; however, no deficiencies are apparent. I find that the Tenant's advocate is correct that the burden of proof rests with the Landlord and I find that the Landlord has not provided any documentary evidence to prove his case. I find that based on the information before me the requirement is to inspect the roof and repair as needed. There is insufficient evidence from the Landlord that the roof needs to be repaired/ replaced.

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated February 1, 2021, is successful and is set aside.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I authorize the Tenant to deduct \$100.00 from one (1) future site/pad rental payment.

Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated February 1, 2021, is successful and is set aside.

The tenancy will continue until 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: May 19, 2021

Residential Tenancy Branch