Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LKA HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Manufactured Home Park Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated August 28, 2021 ("One Month Notice"); and to recover the $100.00 cost of her Application filing fee.

The Tenant and an agent for the Landlord, L.K. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. One witness for the Tenant, G.A., was also present and available to provide affirmed testimony, although he was not called on by the Tenant during the hearing.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Agent said she had received the Application and the documentary evidence from the Tenant and had reviewed it prior to the hearing. The Agent confirmed that she had not submitted any documentary evidence to the RTB or to the Tenant for this proceeding.

Preliminary and Procedural Matters

The Tenant provided the Agent's email address in the Application, which the Agent confirmed in the hearing. The Tenant said she does not have an email address, and she

provided her post box number in the hearing to have the Decision mailed to her. The Parties confirmed their understanding that the Decision and any Orders would be emailed to the Agent and mailed to the Tenant, as appropriate.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 48 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the notice to end tenancy is compliant with section 45 of the Act, as to form and content.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recovery of her $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began on March 9, 2005 with a different tenant's name, D.G., on the tenancy agreement. The Agent said that she never received a notice of the end of D.G.'s tenancy or an assignment of D.G.'s tenancy to the Tenant. The Agent asserted that the Tenant does not have standing to make this Application, as she does not have a tenancy agreement with the Landlord.

The Tenant said that she has been paying $193.00 rent each month, which the Agent has accepted as the pad rent. The Agent said that the rent is actually $193.50, and that there is nothing stopping someone from paying rent for another party. The Landlord said that she receives rent from the Ministry for some tenants, but the Ministry does not have standing to bring an application through the RTB regarding those tenancies.

The Tenant said: "I do not understand any of it, because [D.G.] isn't involved with the evictions, because it is not his trailer." The Tenant had submitted evidence of the transfer of the trailer ownership from D.G. to the Tenant, effective February 26, 2014.

The Tenant submitted a copy of the One Month Notice, which the Parties agreed was

dated August 28, 2021, but not signed by the Agent. It was served by attaching a copy to the rental unit door on August 28, 2021. The One Month Notice has an effective vacancy date of October 31, 2021, which is automatically corrected by the Act to September 30, 2021.

The One Month Notice was served on the grounds 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; 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 Agent explained that the grounds for the One Month Notice are based on noise complaints from other occupants of the manufactured home park. She said that the Parties have another hearing on February 3, 2022, to which the Agent submitted evidence. She said that she did not submit evidence for today's hearing, though. The Agent said:

> I did not provide further evidence re the noise complaints to this hearing, because I had never received an objection to the eviction from someone who has standing to object to the eviction.

I asked the Agent for further explanation of how the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, and the Agent said:

> I have had numerous written complaints regarding noises disturbing to neighbours by someone living there. I sent warning letters – two - and then the eviction. And I said, by the way, this is the quiet enjoyment, which is a material term of their tenancy. I give more credence to written complaints. The noise also contravenes the Village bylaw. Music, yelling . . . I noted this in the warning letters to [D.G.]. I made sure that the occupants had been warned.
>
> There were multiple complaints over the years, but the most recent, that is for the tenancy in place for [D.G.]. All of those warning letters are uploaded as evidence to the February 3rd hearing. I did not provide further evidence re the complainants here, because I had never received an objection to the eviction from someone who has standing to object to the eviction.
>
> The time has passed for objecting to the eviction. As far as the Act, if no one with standing . . . then deemed that conclusively presumed to have accepted it.

I asked the Agent for the most recent complaint about the Tenant prior to serving the One Month Notice to the Tenant. The Agent said she had uploaded evidence to the hearing scheduled for February 3, 2022, but she said she did not submit anything to the proceeding before me. I asked the Agent if she could look through those papers to tell me about the most recent complaint against the Tenant. The Agent said:

> My last letter to the tenant was… August 23, 2020. I sent a letter re loud and disturbing noises, the dog let loose urinating. Loud noise is in conflict with the [Village] Bylaw.
>
> The next time after that would be – I got no response - and we did an eviction on August 28, 2021; we got a lot more verbal complaints. I do have additional letters of complaint.

The Agent went through her evidence from the February 3. 2022 hearing, and noted that the other warning letter was dated September 22, 2019.

From the Agent's testimony, the written complaints appear to be prior to 2021; I, therefore, asked why the Agent had waited until August 28, 2021 to issue an eviction notice for the noise. She said: "Because there were a significant increase in the number of complaints from the neighbours." However, the Agent did not provide any evidence of these complaints in the hearing.

I asked the Agent how the Tenant breached a material term of the tenancy agreement, and she replied, as follows:

> I posted an end of tenancy notice for a breach of material term of the tenancy that was not corrected within a reasonable time after multiple written notices to do so. The breach was noise complaints that violate the Village bylaw - the good neighbour bylaw - and violating the other tenant's right to peaceful enjoyment of the property. Other tenants complained verbally and in writing that the noise was disturbing to them on multiple occasions.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Rule 6.6 sets out the standard and onus of proof, as follows:

> 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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Standing

The term "tenancy agreement" is defined under the Act is, as follows:

> **'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;
>
> [emphasis added]

The term "tenant" is defined by the Act:

> **'tenant'** includes
>
> (a) the estate of a deceased tenant, and
>
> (b) when the context requires, a former or prospective tenant.

From "Practice Essentials for Administrative Tribunals", a 2009 publication of the Ombudsman of Saskatchewan at page 108, "Standing" is defined as:

> Legal right of an individual or organization to participate in a hearing as a party or intervenor.

The Tenant provided evidence indicating that she has owned and lived in the manufactured home since 2014. The Tenant testified that she provided the change of ownership papers to the Agent; however, the Agent did not take this as a sign that a new tenancy agreement should be prepared.

I find that sufficient time has passed that the Agent knew or should have known that the

Tenant was living in the manufactured home on the rented pad. The Agent accepted rent from the Tenant for over seven years; however, the Agent never enquired as to the reason the Tenant was paying the former tenant's rent, if that is what the Agent believed.

I find it more likely than not that the Agent would have seen the Tenant in and around the manufactured home park, and that the Agent knew or should have known that the Tenant was living at this site; however, the Agent never took any steps to enquire as to the Tenant's reason for being there or to determine whether she had a right to live there in the seven years since the Tenant purchased the manufactured home.

I find that the Agent has, in essence, acquiesced or agreed to the Tenant living on the manufactured home pad, and being a "tenant" through the Agent's silence on this matter - until now. As a result, I find on a balance of probabilities that the Tenant is a tenant of the residential property and that she has standing in this matter. I will, therefore, consider the Parties' submissions regarding the validity of the One Month Notice.

Grounds for Eviction

Section 22 of the Act sets out a tenant's right to quiet enjoyment of the rental unit, and states that tenants are entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the manufactured home site, subject only the landlord's right to enter the rental unit in accordance with section 23, and use of the common areas for reasonable and lawful purposes, free from significant interference."

Policy Guideline #6, "Entitlement to Quiet Enjoyment", states that:

> **B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**
>
> A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.
>
> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or

> unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
>
> . . .
>
> A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.
>
> . . .
>
> **Ending Tenancy for Breach of a Material Term**
>
> A breach of the entitlement to quiet enjoyment has been found by the courts to be a breach of a material term of a tenancy agreement. Under section 45 of the RTA and section 38 of the MHPTA a tenant may, with written notice, end a tenancy due to the breach of a material term. **The standard of proof is high**, as it is necessary to establish that there has been a significant interference with the use of the premises. Compensation for damage or loss may be more appropriate, depending on the circumstances.
>
> [emphasis added]

The Agent said she has received numerous complaints about the Tenant, both verbally and in writing. However, the Agent was unable to provide an example of a single complaint in close proximity to the time when she served the Tenant with the One Month Notice. As noted above, the burden of proof in this matter is on the Landlord and the standard of proof is high. However, the Agent did not submit sufficient evidence to this proceeding to support the validity of the One Month Notice.

The Agent's testimony is evidence before me; however, without even one example of a complaint received in the months prior to the One Month Notice being issued, I find that the Agent has not provided sufficient evidence to meet her burden of proof on a balance of probabilities.

This is not meant to diminish the importance of the quiet enjoyment provisions of the Act. Landlords and tenants are required to respect and safeguard other tenants' right to quiet enjoyment of their premises. As such, **the Tenant is cautioned** to control the noise that may be coming from her manufactured home site to prevent disturbing other occupants of the park. **Please note** that the Landlord may apply for another hearing for any noise or other commotion that unreasonably disturbs and/or significantly interferes with other tenants' and occupants' rights to quiet enjoyment of their property from this point forward, if the Landlord has sufficient evidence to prove such an application.

In terms of the validity of the One Month Notice that is before me, a notice to end a tenancy must be compliant with section 45 of the Act, which includes it being "signed and dated by the landlord or tenant giving the notice". However, while the Agent's name is on the One Month Notice, her signature is not. As such, I find that the One Month Notice is not compliant with section 45.

For the reasons above, and pursuant to section 55 of the Act, **I cancel the One Month Notice,** and I find that it is void and unenforceable. The tenancy shall continue until ended in accordance with the Act.

Given the Tenant's success in this Application, I also award her with recovery of the $100.00 Application filing fee from the Landlord, pursuant to section 72 of the Act. The Tenant is authorized to deduct **$100.00** from one upcoming rent payment in complete satisfaction of this award.

Conclusion

The Tenant is successful in her Application to cancel the One Month Notice, as the Landlord failed to provide sufficient evidence to support her burden of proof in this matter on a balance of probabilities. Further, the One Month Notice was not compliant with section 45 as to form and content. The One Month Notice is cancelled and is of no force or effect. The tenancy continues until ended in accordance with the Act.

The Tenant is awarded recovery of the $100.00 Application filing fee from the Landlord pursuant to section 72 of the Act. The Tenant is authorized to deduct **$100.00** from one upcoming rent payment in complete satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 20, 2022

Residential Tenancy Branch