Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNR, OLC, MNDCT, LRE, PSF, AAT

Introduction

This hearing dealt with the tenants' application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 60;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 40;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 63;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 24;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 65.

The tenants were represented by their advocate DD in the hearing, who presented testimony on their behalf. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' applications for dispute resolution hearing package ("Application") by way of registered mail. In accordance with sections 82 and 83 of the *Act*, I find that the landlord deemed served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 81 of the *Act*

The landlord provided undisputed testimony that the tenants were personally served with a 1 Month Notice on August 28, 2021. In accordance with section 82 of the *Act*, I find that the tenants duly served with the 1 Month Notice.

Preliminary Issue – Tenants' Other Claims

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the One Month Notice and the continuation of this tenancy are not sufficiently related to the tenant's application for monetary compensation. As the time allotted is not sufficient to allow the tenants' monetary claim to be heard along with the applications related to the 1 Month Notice to End Tenancy, I exercise my discretion to dismiss the tenants' monetary application with leave to reapply. Liberty to reapply is not an extension of any applicable time lines.

Issues

Should the landlord's 1 Month Notice be cancelled?
If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled an order to allow access to or from the rental unit or site for the tenant or the tenants' guests?

Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental units?

Are the tenants entitled to an order to the landlord to provide services or facilities required by law?

Are the tenants entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This manufactured home park tenancy began in June of 2015. Monthly pad rental is currently set at $345.00, payable on the first of the month.

The landlord served the tenants with a 1 Month Notice to End Tenancy on August 28, 2021 stating the following grounds:

1. The tenants have allowed an unreasonable number of occupants in a unit/park/site/property.
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlord provided the following reasons for why they served the tenants with the 1 Month Notice. The landlord notes that clause 7 of the tenancy agreement states that “A person not listed in clause 1 or 6 who resides in the Site for a period in excess of 30 cumulative days in any calendar year will be considered to be occupying the rental unit contrary to this Agreement.”

The landlord testified that the tenant LH’s mother is not a guest, but an occupant, and therefore the tenants have breached a material term of the tenancy agreement by allowing the tenant LH’s mother to stay there in excess of the 30 cumulative days. The landlord also submits that the tenants have allowed an unreasonable number of occupants in the rental unit, which puts undue strain on the septic system.

The landlord submitted a written statement from the contractor responsible for maintaining the septic system. The contractor states that the rule of 2 persons per residence exists in order to keep the septic system from being overwhelmed and working properly. The contractor notes that the septic system was installed prior to 2005, and are therefore grandfathered under the change in 2005 which mandated that tanks and drainage fields be much larger in size.

JL, the park manager, testified that she lives onsite, and testified that she believes LH’s mother to be a permanent resident who leaves occasionally.

The tenants dispute that LH’s mother is an occupant and testified that LH’s mother is a guest who owns a home in a different city. The tenants testified that the text message submitted in evidence by the landlord refers to another manufactured home which was owned by LH and her deceased husband. The tenants testified that the sale was only finalized in 2021. The tenants testified that LH’s mother still owns her home, where she normally resides. The tenants do not dispute that LH’s mother had some prolonged stays due to unforeseen and extenuating circumstances, including extreme weather, a quarantine, and unsurpassable roads due to the recent floods. The tenants testified that

they were driving LH's mother back to her home in the next day as the conditions have improved.

The tenants dispute that LH's mother constituted an occupant, and they also dispute that they had put undue strain on the septic system.

Analysis

Section 40 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may dispute the 1 Month Notice by filing an application for dispute resolution within ten days after the date the tenant receives the notice. As the tenants filed their application within the time limit under the Act, the onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

In this case, the landlord believes that the tenants have allowed an unreasonable number of occupants in the rental unit, specifically LH's mother, who frequently stays at the manufactured home park with the tenants.

Section 8 of the **Manufactured Home Park Tenancy Regulation Schedule** states the following about occupants and guests:

Occupants and guests

> (1) The landlord must not stop the tenant from having guests under reasonable circumstances on the manufactured home site and in common areas of the manufactured home park.
>
> (2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
>
> (3) If the number of occupants on the manufactured home site is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Manufactured Home Park Tenancy Act*.

Section 24 of the *Act* states the following about the unreasonable restricting of access to the rental unit to a person permitted on the property by the tenants:

Tenant's right of access protected

> **24** (1) A landlord must not unreasonably restrict access to a manufactured home park by
>
> (a) the tenant of a manufactured home site that is part of the manufactured home park, or
>
> (b) a person permitted in the manufactured home park by that tenant.
>
> (2) A landlord must not unreasonably restrict access to a manufactured home park by
>
> (a) a candidate seeking election to the Parliament of Canada, the Legislative Assembly or an office in an election under the *Local Government Act*, the *School Act* or the *Vancouver Charter*, or
>
> (b) the authorized representative of such a person who is canvassing electors or distributing election material.

The *Manufactured Home Park Tenancy Act also states that:*

> **5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
>
> (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In light of the testimony and evidence before me, I find that the landlord has not met the burden of proof to support that LH's mother is an occupant rather than a guest. Although the landlord had included a clause in the tenancy agreement that stipulates that a party who resides in the Site for a period in excess of 30 cumulative days in any calendar year will be considered an occupant, this clause cannot be used in an attempt to avoid or contract out of the *MHPTA and Regulation,* specifically the tenants' right to have guests, including overnight stays.

In this case, I find that that the tenants had established that LH's mother maintains a primary residence in another city, where she normally resides. I also find that the tenants had provided valid and reasonable explanations for the prolonged stays, which include extenuating and unforeseen circumstances such as extreme weather, unpassable roads, and the need to quarantine. I find that these extenuating and unforeseen circumstances contributed to the extended stays which would cause LH's

mother to stay in excess of the 30 cumulative days the landlord uses to define an occupant.

I am satisfied that LH's mother is a guest of the tenants. Although the landlord has expressed concern about the impact of these visits on the septic system, and although the landlord has an obligation to enforce rules that apply to every tenant in the manufactured home park, I am not satisfied that the landlord has met the burden of proof to support that the tenants have allowed an unreasonable number of occupants in the manufactured home site.

The landlord alleges that the tenants have breached a material term of the tenancy agreement, namely the clause that prohibits the tenants from allowing an occupant to stay in excessive of 30 cumulative days in a calendar year. A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, 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. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

> *To end a tenancy agreement for breach of a material term the party alleging a breach…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…*

As stated earlier in my decision, the landlord does not have the right to avoid or contract outside of the Act by including a clause in the tenancy agreement. As noted above, I find that LH's mother was is guest, and as noted in the Act and Regulation, the landlord does not have the right to restrict LH's mother's access to visit the tenants as a guest. I also found that the tenants had provided credible and a reasonable explanation for why LH's mother had extended the visits, which caused the visits to be in excess of the stipulated 30 cumulative days. I find that the application of clause 7 should not apply in this case, and I therefore find that the landlord has failed to establish that the tenants have breached a material term of the tenancy agreement.

For the reasons cited above, I find that the landlord has not met their burden of proof in establishing that they have cause to end this tenancy under section 40 of the *Act*, and accordingly I am allowing the tenants' application for cancellation of the 1 Month Notice dated August 28, 2021. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

As I find that the landlord has attempted to impose restrictions in contravention of the *Act* and Regulation, I order that the landlord comply with the *Act* and Regulation as set out above in relation to the tenants' right to have guests, including the tenant LH's mother, unless the landlord is in possession of an Order from an Arbitrator allowing them to restrict such access. I dismiss the remaining portions of the tenants' application as I am not satisfied that the landlord has contravened any other sections of the *Act.*

I allow the tenants' application to recover the $100.00 filing fee from the landlord. The tenants may choose to give effect to this monetary award by reducing a future monthly rent payment by $100.00.

Conclusion

The tenants' monetary claims are dismissed with leave to reapply.

I allow the tenants' application to cancel the 1 Month Notice and recover the filing fee for this application. The landlords' 1 Month Notice to End the Tenancy dated August 28, 2021 is cancelled and is of no continuing force or effect. This tenancy is to continue until ended in accordance with the *Act*.

I order that the landlord comply with the *Act* and Regulation as set out above in relation to the tenants' right to have guests, unless the landlord is in possession of an Order allowing them to restrict such access.

I allow the tenants to implement a monetary award of $100.00 for the filing fee by reducing a future monthly rent payment by that amount.

I dismiss the remainder of the tenants' application without leave to reapply.

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: January 11, 2022

Residential Tenancy Branch