



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Port4Homes Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, FFT**

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 40; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents. The tenants were assisted by a family member and counsel. After being sworn in, the landlord's witness was excused from the hearing until such time as they would be called to give testimony. The landlord did not subsequently call their witness.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

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

Are the tenants entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This tenancy began over a decade ago. The current monthly rent is \$530.69 payable on the first of each month. The tenants initially claimed that they had paid a security deposit of \$500.00 but subsequently recanted this statement and confirmed no security deposit was paid.

There was a previous hearing regarding this tenancy under the file number on the first page of this decision. That hearing dealt with an application by the tenants for an order that the landlord comply with the Act, regulations or tenancy agreement by permitting the tenant AG, the adult son of the other co-tenants, to access and reside on the manufactured home site. In that decision the arbitrator ordered that pursuant to section 24(1) of the Act the landlord must not restrict access to the site for AG. The decision also notes:

The Tenant is cautioned that the Landlord is at liberty to end the tenancy for cause, should the Tenants or the Tenant's son not comply with the Act, regulations or agreement while residing on Site, in accordance with Section 40 of the Act.

The landlords gave testimony about ongoing disturbances caused by AG, repeated occurrences of police incidents, serious jeopardy to the health and safety of other occupants of the park, and the adverse affect on the quiet enjoyment of the other occupants and the landlord. The landlords testified that the unacceptable behaviour on the part of AG was raised on numerous occasions with the other co-tenants.

The landlord submitted into evidence text messages and email correspondence discussing the ongoing issues.

The landlord issued a 1 Month Notice dated October 12, 2021. The reason provided on the notice for the tenancy to end is that there has been a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. In their details of cause the landlord writes in part:

The tenancy agreement has a conduct clause which has since been breached. The tenant has also signed a crime free housing agreement which has also been breached...The police have attended the site at least 2 times since [the previous decision date] (most recently July 5 2021 and October 11 2021) because the tenant was fearful for her safety. Neighbours are complaining about [the tenant's family member] being inappropriate and we have reports of open criminal behaviour in the park (letters and witnesses to attend arbitration if necessary). On October 11 2021 The tenant called the police because of fear for her safety from her son. We have photos, the tenants testimony that she wanted [her son] gone and "Enough is Enough" and our onsite manager's account of events that occurred. In the reasonable opinion of management this situation unreasonably disturbs and puts at risk tenants and management. This is a breach of a material term that the tenant agreed to On Oct 25, 2013.

The landlord issued the 1 Month Notice on October 12, 2021 with email correspondence of the same date stating that they are issuing a notice to end tenancy effective November 30, 2021 but would reinstate the tenancy if the tenants end the occupancy of their family member by November 1, 2021.

The landlord submits that the previous discussions and correspondence as well as the earlier decision constitutes written notice of the breach and its consequences.

Analysis

Section 40 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

In the present case the tenant was served with the 1 Month Notice on October 12, 2021 and filed their application for dispute on October 21, 2021, within the 10 days provided under the statute.

The landlord has indicated that the reason for the tenancy to end is that there has been a breach of a material term of the tenancy agreement. While the landlord's written submissions and testimony reference interference and disturbance by persons permitted in the manufactured home park by the tenant, illegal activities that has adversely affected the quiet enjoyment, security, safety and well-being or others they have not indicated on the 1 Month Notice that these are the reasons for the tenancy to end.

Residential Tenancy Policy Guideline 8 defines a material term as a term that is so important that the most trivial breach of that term gives the other party the right to end the agreement.

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 present circumstance I find little evidence that the landlord gave in writing to the tenant notification that there is a problem that was believed to be a breach of a material term of the tenancy agreement and that the breach must be fixed by a reasonable deadline.

The email correspondence submitted into evidence by the tenants is dated October 12, 2021 the date of the 1 Month Notice. I do not find that notification sent in writing simultaneously with the 1 Month Notice to provide reasonable time to fix the purported breach of a material term.

Even if I were to find that the Conduct clause in the original tenancy agreement of 2013 is a material term, which I have not determined but note that the evidence of the landlord is that there have been ongoing disruptions which did not result in issuances of Notices to End the tenancy previously, I find that the landlord has failed to give the tenants written notice of the breach prior to the issuance of the 1 month Notice as prescribed in the Policy Guideline.

I do not find the text messages or copies of correspondence meet the requirements of written notice of a breach of a material term as outlined in the Policy Guideline. I find the landlord's interpretation of the previous decision as precluding the need to give written notice of a breach to not be persuasive and not supported in an ordinary reading of the text of the decision.

The landlord provided testimony about unreasonable disturbances, significant interference with others, serious jeopardy to the health and safety of others, and illegal activity that has adversely affected the quiet enjoyment, security, safety and well-being of others. While these may be reasons for a tenancy to end pursuant to section 40, these were not the reasons indicated on the 1 Month Notice of October 12, 2021.

Consequently, I allow the tenants' application and cancel the 1 Month Notice of October 12, 2021. The notice is of no further force or effect and this tenancy continues until ended in accordance with the Act.

As the tenants were successful in their application, they are entitled to recover the filing fee from the landlord. As this tenancy is continuing the tenants may satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The tenant's application is granted. The 1 Month Notice of October 12, 2021 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenants are permitted to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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: February 24, 2022

Residential Tenancy Branch