Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, RP, FFT

Introduction

This hearing was reconvened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 40 of the *Manufactured Home Park Tenancy Act* (the "Act"). The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling a notice to end tenancy?

Background and Evidence

The tenancy of a mobile home site under written agreement stated on July 22, 2010. Pad rent of $448.00 is payable on the first day of each month. The mobile home includes an addition (the "Addition"). On June 29, 2021 the Tenant was given a one month notice to end tenancy for cause dated June 29, 2021 (the "Notice"). The Notice sets out that the Tenant or a person permitted on the property by the Tenant has:

- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the Landlord's property at significant risk;
- has not done repairs to the site in reasonable time;
- has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The Landlord states that the Tenant was given a breach letter dated May 26, 2021 requiring the Tenant to remove the Addition to the mobile home within 30 days of the letter. The Landlord states that the material term being breached in set out in section 10(c) of the tenancy agreement requiring that the Tenant will not endanger persons and that the term is material as it goes to safety risks. The Landlord states that the ground under the addition no longer supports the Addition and if the Addition falls it could cause serious injury to both the Tenant and persons who may be on the park road downslope from the addition. The Landlord states that this road is the only entry or exit for park residents. The Landlord states that clause 9 of the Park Rules is also a material term of the tenancy requiring the Tenant to maintain the unit, skirting and any additions. The Landlord states that the Addition has not been removed.

The Tenant states that if the Addition is removed it will not stop the loss of ground. The Tenant states that the section referred to in the tenancy agreement is not a material term as it does not make sense.

The Landlord states that the Tenant was required to make repairs in relation to the addition by levelling the ground under the home and by blocking. The Landlord states this requirement was pointed out to the Tenant but that no letter requesting such repairs has been given to the Tenant. The Tenant states that the blocking and levelling was mentioned to the Tenant in May 2021.

The Landlord states that by not removing the Addition the Tenant has seriously jeopardized the safety of the Landlord’s staff and other residents as the addition sits above a slope alongside the only entry and exit and if the Addition falls it could slide down the slope and injure persons on the road. The Landlord provides a copy of an engineering report indicating that the Addition is a safety concern to the Tenants and that the proximity of the addition presents a concern for slope movement.

The Landlord states that the Tenant's failure to remove the Addition will put the Landlord's property at significant risk as the fall of the Addition could compromise a nearby bridge, could cause an avalanche of the area, could raise the risk of fire as it could pull out the electrical wiring attached to the Addition. The Landlord states that the Tenant also has several roof downspouts that are disconnected with storm water running down the slope causing further damage to the slope. The Landlord states that if the road is compromised it will affect access and exit for emergency vehicles.

The Tenant states that there is no danger to the road as if the Addition does fall it will hit the line of large trees at the bottom of the slope and fronting the road. The Tenant states that the Addition will not cause any risk to the property or other occupants of the park. The Tenant states that further erosion of the slope is not likely to be caused by the downspouts and that the Landlord's own actions in removing several of the trees on the slope between the home and the road caused the problem with the ground erosion. The Tenant states that before the trees were removed, they absorbed or kept the water from eroding the slope. The Tenant states that before the removal of the trees there was no erosion and that since the trees were removed there has been greater and greater erosion each year. The Tenant states that the Landlord has water problems and a bad sewer system causing the problem with the Addition.

The Landlord states that the trees were removed because they were uprooting and pulling down the slope. The Landlord states that the trees at the bottom of the slope were not removed as they were smaller trees and stabilized the bank beside the road. The Landlord states that the report indicates that the removal of the trees does not have a significant effect on the erosion under the Addition. The Landlord states that the cause of the erosion is from a small stream, ground water and a problematic septic field. The Landlord states that the water issues come from a creek bed, but that drilling is not required due to the costs involved. The Landlord states that they are working on the surface drainage and that if dye shows up on the property, then the Addition must be removed due to the erosion.

The Landlord states that the Tenants have contributed to the erosion by the failing downpipes. The Landlord states that they have gone to great lengths to resolve the erosion and that the report advises that the Addition be removed.

The Tenant states that the roots of the removed trees were not exposed and that they supported the slope and the trailer. The Tenant questions who gave the Landlord the advice to remove those trees. The Landlord states that a construction company and a septic soil specialist suggested the removal of the trees. The Tenant states that over the years of the tenancy there was no shifting until the trees were removed.

The Landlord states that investigations have led to the determination that the slope cannot now be remediated and that it is unclear whether the ground can be stabilized.

Analysis

Section 40(1) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia,

- the tenant or a person permitted in the manufactured home park by the tenant has
    - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
    - put the landlord's property at significant risk;
- the tenant does not repair damage to the manufactured home site, as required under section 26 (3) *[obligations to repair and maintain]*, within a reasonable time;
- the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Even if the section of the tenancy agreement or the park rule clause were material terms, there is no evidence that the Tenant has done anything to cause the ground under the addition to be eroded resulting in the instability of the Addition. On the contrary, the Landlord's own evidence is that the cause of the erosion is from a small stream, ground water and a problematic septic field and that the ground under the addition no longer supports the Addition. Even if the Tenant repaired the downspouts, given the Landlord's evidence of causation it would appear that such repairs would have little to no effect on the base cause of the erosion. There is no evidence or argument that the Tenant is responsible to repair the eroded ground under the unit and the Park Rule only requires the Tenant to maintain the Addition, not the ground under the Addition. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenant did anything or failed to do anything that caused the Addition to become unstable and that the Landlord has not substantiated that the Tenant, by act or negligence, breached a material term of the tenancy agreement. For these same reasons I also find that the Landlord has not substantiated that the Tenant did anything to cause serious jeopardize to anybody or cause risk to the Landlord's property.

Given the Landlord's evidence that the matter of blocking and levelling was only pointed out to the Tenant, I consider that there was no meaningful request made for these repairs prior to the service of the Notice. Further, there is no evidence of any amount of time given to the Tenant for such repairs. As a result, I find that the Landlord has not substantiated that the Tenant failed to make repairs to the site in a reasonable time. As none of the reasons for the Notice have been substantiated, I find that the Notice is not valid and that the Tenant is entitled to its cancellation. The tenancy continues.

As the Tenant has been successful with the cancellation of the Notice I find that the Tenant is entitled to recovery of the $100.00 filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

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

Dated: March 16, 2022

Residential Tenancy Branch