Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding No 151 Cathedral Ventures Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PSF FFT

Introduction

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

- an order requiring the landlords to provide services or facilities required by law, pursuant to section 58; and
- authorization to recover the filing fee for this application, 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 with agent KT primarily speaking (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

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*.

The tenant submitted into evidence reasons for judgment of a judicial review decision of October 12, 2021. The tenants provided this judgment to the Branch on March 23, 2022, the day before this hearing, and stated that they did not serve this document on the landlord. The landlord testified that they were in attendance at the judicial review hearing and received the reasons for the judicial review decision orally at that time. They did not object to the inclusion of the written decisions in the evidence.

Based on the submissions of the parties and in accordance with Residential Tenancy Rule of Procedure 3.17, as the parties consented to its inclusion, confirm they have had an opportunity to previously review the material and I find it will not unreasonably prejudice any one party or result in a breach of the principles of natural justice, I allow the judicial review decision to be entered into evidence.

Issue(s) to be Decided

Should the landlord be ordered to provide services or facilities under the Act, regulations or tenancy agreement?
Are the tenants entitled to recover their filing fee from the landlord?

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.

The parties agree on the background facts. There is a tenancy agreement by which the tenants are obligated to pay monthly pad rent in the amount of $217.61. During the winter months of October 1 to April 1 the tenants do not occupy the manufactured home on the rental site.

There is a lengthy history of litigation regarding the rental site occurring under the file numbers on the first page of this decision. The present application seeks relief identical to that sought in the May 21, 2020 decision of an order requiring the landlord to provide services or facilities. Specifically, the tenants seek to dispute a Notice Terminating or Restricting a Service or Facility for their winter storage of a manufactured home from the site for the winter months when they are not occupying the home.

In the decision of May 21, 2020 the presiding arbitrator found that storage of a manufactured home on the rental site did not constitute an essential service or facility that is a material term of the agreement pursuant to section 21(1) of the *Act*. Consequently, the tenants' application to dispute the Landlord's Notice of Termination of the Service was dismissed.

The tenants applied for judicial review of the May 21, 2020 decision and did not remove their manufactured home from the rental site. The decision of May 21, 2020 was set aside at judicial review and the matter was remitted back to the Branch. The parties

agree that rather than wait for a new hearing date under the file number of the May 21, 2020 decision the landlord has issued a new Notice Terminating or Restricting a Service or Facility dated November 30, 2021 and the tenants have filed the present application in response on December 6, 2021.

A copy of the signed tenancy agreement and the Notice Terminating Service was submitted into evidence. The tenants adopt the oral reasons for the Judicial Review decision as their own submissions and submit that:

> [the] tenancy agreement clearly contemplates the right for the tenant's manufactured home to remain on the site over the winter. The tenant pays $2,570 per month for the entire year. There are terms in the agreement contemplating the winterizing of the manufactured home, including protecting it and adding plastic to the home to protect it from the winter winds. And the agreement specifically states, regarding winterizing -- “All tenants are responsible for winterizing their units. The summer water is turned off just after the Thanksgiving weekend each year. Tenants are to ensure that they are connected to winter water and that their pipes are protected from frost. The Park is not responsible for any damage that occurs to units during the winter weather” -- and contemplates tenants being responsible for winterizing all of their units.

The tenants further quote from the Judicial Review decision which provides:

> [97] In my view, this notice was clearly a breach of s. 21(1)(a) and (b) of the MHPTA. Regarding the essentialness of the term, not allowing the use of the site as a site for a manufactured home for half of the year is obviously to terminate or restrict the tenant's use of the manufactured home site as a site for a manufactured home. It is to remove exactly that right for 50% of the year. Prohibiting that use for six months is terminating or restricting something that is essential for that use, i.e. the right to do it at all. [
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> [98] Regarding materiality of the term, providing a site for a manufactured home year-round and allowing the occupancy from April to October goes to the root of this Gabriele v. No. 151 Cathedral Ventures Ltd. Page 25 contract for a tenant, given that the tenancy agreement contemplates the tenant's right to do so, and moving the manufactured home in and out twice a year would be inconsistent, disruptive, and costly.

> [99] Considering the facts and circumstances surrounding this tenancy agreement and its creation, I do not see how one could come to any other conclusion than that the ability to leave the home on site was a fundamental term of the agreement. In my view, the fundamental terms of the agreement are, as I have said, that the manufactured home site may be left on the manufactured home park year-round and the tenant has the right to occupy the site for the six months from April to October

The landlord submits that the use of the rental site for storage of a manufactured home that is not inhabited or inhabitable during half of the year cannot reasonably be considered an essential service or a material term as outlined in the Policy Guideline. The landlord says that the use of a rental site for storage facility during winter months is not an essential element of this tenancy but simply an implied term which has been terminated in accordance with the *Act*. The landlord submits that restricting the use of the rental site for storage purposes does not affect the use of the rental site as living accommodation as the tenants are not residing in the site during the winter months.

Analysis

Section 21(1) of the Act states:

> **21** (1)A landlord must not terminate or restrict a service or facility if
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> (a) the service or facility is essential to the tenant's use of the manufactured home site as a site for a manufactured home, or
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> (b) providing the service or facility is a material term of the tenancy agreement.

The copy of the signed tenancy agreement includes a clause contemplating winterizing of manufactured homes which states that tenants are responsible for winterizing their units. I find that the agreement explicitly contemplates manufactured homes remaining on the site throughout the year and deals with obligations to winterize the home, connecting to water sources and the landlord not being responsible for damage to the home.

I find it evident that the manufactured home remaining on the site is an explicit term of the tenancy agreement.

Policy Guideline 22 outlines what is an essential service or facility or a material term of a tenancy and provides:

> An “essential” service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation or use of the manufactured home site as a site for a manufactured home, the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.
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> 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. Even if a service or facility is not essential to the tenant’s use of the rental unit as living accommodation, provision of that service or facility may be a material term of the tenancy agreement. When considering if a term is a material term and goes to the root of the agreement, an arbitrator will consider the facts and circumstances surrounding the creation of the tenancy agreement. It is entirely possible that the same term may be material in one agreement and not material in another
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> In determining whether a service or facility is essential, or whether provision of that service or facility is a material term of a tenancy agreement, an arbitrator will also consider whether the tenant can obtain a reasonable substitute for that service or facility. For example, if the landlord has been providing basic cablevision as part of a tenancy agreement, it may not be considered essential, and the landlord may not have breached a material term of the agreement, if the tenant can obtain a comparable service.

Under the circumstances, I find the tenants’ submission that the use of the rental site is an essential service and a material term of this agreement to be compelling. A manufactured home is not a vehicle that can be easily removed from a rental site. I take judicial notice of the fact that a manufactured home is blocked and skirted and not intended to be mobile. It is not a vehicle that can be driven down the road to an alternate site but a structure that requires great expense, preparation and effort to transport.

I find that limiting the placement of a manufactured home on a rental site for half of each year is unreasonable and effectively serves to terminate the tenants' ability to use the manufactured home site at all. I find that requiring a tenant to remove a manufactured home for half a year, would cause significant obstacles to using the rental site for residential purposes during the remaining half of the year.

I find that the placement of a manufactured home on a manufactured home site to be an essential service and a material term of the tenancy agreement. I find that the continued placement of the manufactured home on the rental site throughout the winter months, when the tenants intend to return and reside in the property, to be essential to the use of the rental site for ordinary residential purposes.

I do not find the landlord's submission that requiring the tenants to remove the manufactured home from the site during the winter months when the manufactured home is uninhabitable does not affect its use as living accommodation to be persuasive. I find that any prohibition on the tenants placing their manufactured home on the rental site during the winter months would consequently deny them their ability to use the rental site during the summer months. I find the landlord's submissions to be akin to requiring the tenants to remove their manufactured home from the rental site when they are not physically residing in their home, a proposition that I find unreasonable.

For these reasons I find the use of the manufactured home site for the placement of a manufactured home throughout the year to be an essential and material term of the tenancy agreement between the parties and not a service or facility that can be terminated pursuant to section 21(1) of the *Act*. Accordingly, I find the Notice of November 30, 2021 is of no force or effect. The landlord is ordered to continue providing the service or facility as specified in the tenancy agreement.

As the tenants were successful in their application, they are entitled to recover their 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 tenants' application is successful. The Notice of November 30, 2021 is cancelled and of no force or effect. The landlord is ordered to provide services or facilities as set out in the tenancy agreement.

The tenants are authorized 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: March 30, 2022

Residential Tenancy Branch