Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1279583 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, MNDCT, FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; a monetary order; and an order to have the landlord comply with the *Manufactured Home Park Tenancy Act (Act)*, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the tenant; his witness and two agents for the landlord

No specific issues were identified by the parties in regard to the service of evidence and documents. I note that both parties advised that they had had an opportunity to review each other's evidence and were prepared to proceed with the hearing.

I note that because this is an Application for Dispute Resolution submitted by the tenants seeking to cancel a notice to end tenancy issued by the landlord, Section 48 of the *Act* requires I issue an order of possession to the landlord if the landlord's notice complies Section 45 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

Residential Tenancy Branch 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 claim regarding the One Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenant's claim to have the landlord comply with the *Act*, regulation, or tenancy agreement or to the tenant's monetary claim.

The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rest largely on facts not germane to the question of whether there are facts which establish the grounds for

ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss the tenant's claim to have the landlord comply with the *Act*, regulation, or tenancy agreement or to the tenant's monetary claim. I grant the tenant leave to re-apply for these other claims.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a One Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 40, 60, and 65 of the *Act.*

Should the tenant fail to succeed in cancelling the One Month Notice to End Tenancy for Cause, it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 48 and 45 of the *Act*.

Background and Evidence

While the landlord had submitted one page of a tenancy agreement the full details of the tenancy were agreed upon by the parties during the hearing as follows: The tenancy began on a month-to-month basis for a current monthly rent of $314.00 due on the first of each month.

Both parties have submitted a copy of a undated document entitled "Park Rules" that is unsigned by either party which contains clause 11 regarding pets. Clause 11 states:

> "Pets are permitted subject to the Landlords written approval. Only one dog per household unless permission is granted by the Landlord. Authorized pets must be kept quiet and under control as to not disturb other residents. All pets must be kept on a leash while outside the Tenants home or the Tenants fenced yard. It is the responsibility of the Tenant to clean up after their pet or guest pet and to keep pets off the sites of other residents. Pet owners are responsible for any and all damage done by their pet or guest pet to their site, the Park's common property or the site or property of other residents. Pets that are noisy, unruly or who cause complaints must be removed from the Park upon receiving written notice from the Landlord to do so. Outdoor cats are not allowed, and indoor cats let out side must be kept on a leash. The breeding of pets, keeping of livestock or chickens is not permitted. Tenants must not feed or encourage wild animals in or near the Park."

The landlord has also submitted an additional undated document entitled "Rules" signed by the tenant which contains a number of clauses under the section titled "F. Pets" as follows:

> “1. The pet population is controlled by Landlord; no pet whether mammal, bird, reptile, insect or arachnid, may be brought into Park or acquired after occupancy commences without the prior written approval of Landlord.
> 2. Landlord may, at any time, withdraw its approval to any pet of Tenant. If Landlord withdraws its approval, Tenant shall remove the pet in question within 48 hours of receiving notice of Landlord's withdrawal of its approval.
> 3. Dogs are permitted *in* the park with prior written permission by the Landlord and a photo of same to prove what pet has been allowed. Dog sitting is not permitted in the park, unless written approval by the Landlord is given for a specific set period of time. If you walk your dog in the park, it must be restrained at all times, and you must ensure the feces gets picked up as soon as it is deposited. Further, you must keep your dog from urinating on shrubs or other residents' property in the park. Please try to walk your dog outside of the park to stop conflict with other dogs and residents. These rules apply to any common property, trails or roads which are on park property.
> 4. If the Landlord receives written complaints from more than one of your neighbors about your pet, the Landlord may require you remove the pet from the park.”

The landlord submitted that the tenant has breached a material term of the tenancy agreement by allowing his dog to roam freely in the Park despite the requirements set forth in the tenancy agreement and the Park Rules.

The parties agreed that there was a term in the tenancy agreement restricting pets and that it is designated to be a material term of the tenancy. However, neither party has provided a copy of that part of the tenancy agreement or specifically the wording of that clause. The landlord read the term into the hearing and the tenant agreed with the wording the landlord read.

The landlord also submitted that the tenant has had a number of interactions with other occupants of the Park as well as agents for the landlord. Some of the disturbances include disputes between the tenant and a neighbour (site 11) who had also received a Notice to End Tenancy as well as agents acting on the landlord’s behalf to deliver communications to all the occupants in the park.

The landlord submitted that the tenant and his neighbour have had ongoing disputes for several years and that it was an incident with the neighbour on December 22, 2021 that precipitated the need to issue the tenant the One Month Notice.

Specifically, on December 23, 2021 the landlord received an email complaint from the neighbour in site 11 asserting that on the day before, the tenant began yelling and swearing at him and his partner while he was cleaning off snow from his vehicle. The landlord has also submitted a copy of an affidavit dated March 11, 2022 signed by the complainant neighbour from site 11, attesting to these events.

The landlord submitted that the tenant had, in August 2021 put plywood up against another occupant's heat exchange/air conditioner without the neighbour's permission. The landlord provided a text message regarding and video recording of the interactions between the tenant and the other occupant.

The landlord also submitted evidence from a couple who had been delivering some materials on behalf of the landlord at or near the time the landlords were transitioning from the previous owner to the current owner. These events occurred in January 2021 and included. The landlord's witness was one of the members of the couple delivering the material.

She provided that while she was delivery the material, the tenant and his dog came towards down the road and that the dog jumped on her. She also submitted that the tenant had been yelling previously at her husband about the rules for dogs and that after the dog jumped on her the tenant began to continue yelling out about him not having to leash his dog.

The landlord provided a copy of a warning letter dated November 5, 2021, outlining 4 specific violations of Park Rules, the tenancy agreement and/or the *Act* which "must be immediately and permanently correct". Specifically, the landlord identified the following:

> "1. Your continued harassment of me including numerous unfounded emails, must cease. If you have a legitimate complaint, my hours of business are from 9:00 am to 5:00 pm weekdays, except for statutory holidays. My phone number and email are to be used outside those hours for a legitimate emergency only.
> 2. Your dog is continually allowed to roam freely and defecate on the parks community property. At all times when outside your site, your dog must be on a leash, controlled by you, and you must pick up all droppings from your dog.
> 3. You have trespassed on other residents' sites. You must not enter any resident's site without their agreement or prior consent.
> 4. I am well aware that you and your neighbour, Melvin, have been feuding for months. As stated in my letter of April 9, 2021, I am neither legally nor morally obligated to attempt to resolve your disputes. I am not a mediator, arbitrator, nor counsellor. If you are unable to live peacefully, I recommend you obtain the assistance of a mediator or counsellor."

Both parties submitted into evidence a copy of a One Month Notice to End Tenancy for Cause issued on December 24, 2021 with an effective vacancy date of January 31, 2022 citing 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 breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the Details of Events section of the Notice to End Tenancy the landlord wrote:

> "There have been frequent incidents involving this tenant interfering with and disturbing other residents. On December 22, 2021, the neighbours on the adjacent site were outside their home when [tenant] began yelling threats and profanities and an excessive amount of disturbing language towards them.
>
> Despite several warnings, [tenant] has also repeatedly breached a material term of his tenancy agreement by allowing his dog to roam off leash on to other residents' sites. His latest written warning was issued on November 6, 2021."

The tenant acknowledges receipt of the One Month Notice on January 4, 2022 and submitted his Application for Dispute Resolution on January 5, 2022.

The tenant submitted that the landlord is colluding with current and former occupants of the manufactured home park to invent reasons to suggest the tenancy should end. He submitted that there area basically 4 households involved; two of whom have moved; one act as park agents; and one is someone renting the manufactured home and is not an owner.

The tenant submitted that the evidence submitted includes "statutory declarations" and not affidavits; that the statutory declarations and some of the emails and signed documents submitted were written after the Notice to End Tenancy was issued and therefore, they should not be considered.

The tenant also submitted that some of the documents submitted were provided by friends and/or relatives of previous tenants who had been evicted and continue to want to see the tenant's tenancy ended.

The tenant also referred to a number of previous files that involved other previous tenants. In his testimony he referred to evidence that had been submitted to these previous hearings. I note that the tenant did not provide either copies of the decisions from these previous files or any evidence that was considered by the arbitrators in those files.

The tenant also submits that the current landlord can not have any direct knowledge of any events prior to their purchase of the Park and therefore I cannot rely on any events prior to their ownership.

The tenant's witness provided testimony regarding an issue that was complained about from another occupant of the park on March 25, 2022. The tenant and witness stated that they were on a phone call with each other at the time that the complainant states that the tenant was yelling at her.

Analysis

I note that in the tenant's oral and written submissions he provides that "statutory declarations" are not affidavits and should not be considered and that any evidence that is dated after the Notice to End Tenancy was issue should not be considered.

The statutory declarations submitted are declared before a "Commissioner for taking Affidavits in British Columbia". Both affidavits and statutory declarations are sworn statements of fact, with the primary difference being that an affidavit usually has additional evidence to support the statement of facts.

I note that a party may submit whatever evidence they feel will help establish their position on any given matter. The arbitrator will consider all evidence including how reliable the evidence is and assign a certain value to that evidence. For example, an email without a signature may be determined as less substantial than a signed statement, which may be considered less substantial than an affidavit. As such, I have considered all evidence presented to me and considered if the submission provides sufficient evidence to establish each party's position.

As to documents that were created after the Notice to End Tenancy was issued, while I cannot consider events that have occurred since the Notice was issues as a contributing factor as to whether or not the landlord has cause to end the tenancy, I can consider documents and statements that have been obtained after the Notice was issued.

That is to say, that any party to dispute resolution is allowed to obtain evidence including documented statements which may include emails, handwritten letters, statutory declarations or affidavits after the issuance of a notice. The date the document is created has no impact on the value of that evidence. As such, I have considered evidence that fits this criterion.

Section 40 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other reasons, one or more of the following applies:

a) The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and/or
b) 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.

Residential Tenancy Policy Guideline #8 defines a material term as one 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 guideline goes on to say that an Arbitrator will focus on the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It is, however, incumbent on the party

relying on the term to present evidence supporting their position that the term was material to 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.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

Because of the high bar that establishes a term as material to the tenancy agreement, the term must be written in way that conveys certainty to both parties, for the duration of the tenancy, of what infractions might constitute a breach. In the case before me, I find that because the term in the tenancy agreement is contingent upon Park Rules the term cannot be considered as material.

I make this finding since a landlord may change Park Rules with two weeks notice in accordance with the Manufactured Home Park Regulation and as such, there is no certainty of the wording of the term in the tenancy agreement for the duration of the tenancy.

Therefore, I find, regardless of the issue, in the case, the landlord's assertion that the tenant has breached the material term related to dogs in the park, the landlord cannot establish that the term was material. As such, I find the landlord cannot use this as cause to end the tenancy.

In regard to the landlord's claims that the tenant has significantly interfered with or unreasonable disturbed other occupants, I find the landlord has established cause to end the tenancy.

I make this finding, at least in part, as I find the landlord's submissions are complete and factual and represent considerations over the duration of the tenancy. I find the landlord's submissions show that the tenant has a history of insisting, with all other occupants of the property, that his interpretation of the rules is the only one that should be followed and that when people don't follow his interpretation, he verbally assaults them in a very aggressive manner.

I am satisfied that the landlord position in regard to the issues identified on the Notice to End Tenancy and her summary of events that lead to the issuance of the Notice is supported by sufficient documentary evidence and testimonial evidence from her and her witness to establish cause.

Despite the tenant's assertions that there has been collusion or a conspiracy on the part of the landlord and other tenants he has provided no evidence to support his claims. It is not sufficient to state that people who have been evicted or who have left the park want to get back at him and so have the other occupants who remain in the park to conspire to have him removed – he must provide evidence.

As a result, I dismiss the tenant's Application for Dispute Resolution, in its entirety, without leave to reapply.

Section 45 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the One Month Notice to End Tenancy for Cause, issued by the landlord on December 24, 2021, complies with the requirements set out in Section 45.

Section 48(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 45 of the *Act*.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: April 12, 2022

Residential Tenancy Branch