Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT / OPC FFL

Introduction

This hearing dealt with two applications pursuant to the *Manufactured Home Park Tenancy Act* (the "**Act**"). Landlord CRC's application for:

- an order of possession for cause pursuant to section 48; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 65.

And the tenants' application against both landlords for:

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

This matter was reconvened from a prior hearing on January 11, 2022. I issued an interim decision setting out the reasons for the adjournment on January 12, 2022 (the "**Interim Decision**"). This decision should be read in conjunction with Interim Decision.

Both tenants attended the hearing. They were assisted by counsel ("**BG**"). Landlord CRC, a corporate entity, was represented was represented at the hearing by its president, landlord JN.

Issues to be Decided

Are the landlords entitled to:

1) an order of possession;
2) recover the filing fee;

Are the tenants entitled to:

1) an order cancelling the Notice;
2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties disagree as to when the tenancy started.

The tenants testified that they moved into the manufactured home park (the "**Park**") in September 2001, when it first opened. They testified they entered into a tenancy agreement with the former owner of the Park (I note that the former owner and the current owner both operate under the name "CRC". However, I understand that this was the name of the Park itself, and not the underlying corporate entity which owned the Park). The tenants testified that they were responsible for pouring a concrete pad on the manufactured home site (the "**Site**") and that they could park their 5th Wheel on the Site. They live in a manufactured home located on the Site (the "**Manufactured Home**") which they own. Tenant JB testified that pursuant to the terms of the agreement reached in 2001, the Site was to be "maintenance-free". No written document memorializing this agreement was entered into evidence.

The landlords disagreed. They submitted a copy of a tenancy agreement dated October 1, 2004 between the former owner of the Park (operating as CRC) and tenant MB. The document was a standard for tenancy agreement (#RTO-1). Tenant JB was identified as a landlord. MB did not sign the agreement, but it was signed by JB as agent for CRC. JN testified that JB was the Park's caretaker until 2009. This written tenancy agreement indicated that there is also a seven-page addendum. However, no copy of this addendum was entered into evidence, and JN was unable to say with certainty what terms that addendum may have contained.

The tenants argued that this was a fraudulent document, and JB testified that he never created, prepared or signed it. Their counsel also argued that, even if it were a genuine document, it was not signed by anyone on behalf of the tenants, is it was not a valid contract.

On August 28, 2021 the landlord served the tenant with a copy of the Notice (which was dated August 27, 2021). The tenants confirmed receiving it on this date. The Notice specified an effective date of September 30, 2021. It specified the following reasons for its issuance:

- Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Tenant has not done required repairs of damage to the unit/site/property/park.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Notice provided the following additional details:

> One of the tenants ([tenant JB]) has been consistently abusive to our park manager when he has tried to explain the repairs needed to his home and site, has misled other tenants in the park with regards to their responsibilities to undertake repairs needed to their homes in pad sites, has brought an RV into the

park without landlord approval, and his failed to complete repairs needed to his home and site in spite of many notices to do so, both verbal and written.

JN testified that the main point of contention between the landlord and the tenants is that the tenants have failed to, or refuse to, comply with many of the rules for the Park (the "**Park Rules**" or the "**Rules**"). JN testified that tenant JB advised him that he was "grandfathered in" and that the Park Rules did not apply to him, as they were not in existence when the tenancy started.

JN testified that JB used his role as a former park manager to mislead him and other occupants of the park as to the applicability the Park Rules.

JN provided a copy of the Park Rules dated November 1, 2021 which included the following terms:

> […]
>
> A.6 **All porches, decks, sheds, workshops, steps, fences, additions, etc, to be built on the premises or on the site must meet building code requirements but must first be approved by landlord in writing**. A properly dimensioned plan must be drawn up by the tenant and signed by the landlord before a building permit application is submitted to the [municipal district] before approval or work begins. The exterior roof and any addition, shed or workshop shall be finished with materials and colours to match, or coordinate with those on the home in the opinion of the landlord, and rainwater gutters and leaders are to be installed to direct water away from the home and underground via three to four inch PVC piping to a drainage course as directed by the landlord. Note, plywood, lattice, OSB strand board, plastic sheeting and tarps are not acceptable siding, skirting, fencing or railing materials.
>
> A.7 Skirting: (a) all manufactured homes must be completely skirted with insulated vinyl material designed for such application within four (4) weeks of the home arriving in the park. Skirting must be installed vertically to meet existing grades (Note: filling the site to meet skirting is not allowed), must be vented, white in colour, or earthtone **(TO BE APPROVED BY LANDLORD BEFORE INSTALLATION**), must have two access doors and be kept secure, clean and well maintained; (b) porches, decks and additions must be skirted with the same material as the home; (c) installation and venting must meet manufacturers and building code requirements. Tenant is to install a 14 inch wide strip of gravel or paving stones between skirting and grass and a four inch by 4 inch pressure treated sleeper or concrete border between grass and gravel to protect the skirting.
>
> A.8 All windows must be double glazed with matching vinyl frames in white or off white colour, to be approved by landlord in writing before installation, and have a

6 inch wide cedar or Hardie board trim surrounding the windows. Window coverings are to be white mini blinds. Tenant is not to use plastic, reflective or stick on materials or to place insulation or boards in the windows.

[…]

B.4 television cable service hookup is available to all pads. Individual TV, radio, ham, or other antenna **ARE NOT PERMITTED IN [THE MANUFACTURED HOME PARK]**. The location, size, colour and type of TV and satellite dish must be approved by the landlord in writing.

[…]

B.8 exterior of home must be cleaned of rust, dirt and decay each year, and must be periodically repaired and painted. Homes are to be painted in soft earth tone colours, or other soft colours as approved by landlord in writing. Siding on the home that is damaged or dented and/ or more than 25 years old must be replaced with vinyl or Hardie plank shiplap siding designated for such purpose, in colours approved by the landlord in writing before installation. Steps must be safe, clean, non slip, using pressure treated materials or Trex products and built to code. If made of wood, they must be stained or painted to match or coordinate with the home, per landlord approval and maintained each year, including painting and staining.

[…]

B.11 Grounds around the home and the boulevards, dishes, trees, bushes and common areas adjacent to the site shall be grassed and landscaped, kept neat, trimmed, clean and in a safe condition, and mowed by the tenant at least weekly during the growing season. Flowers are to be planted in a landscape bed across the front of the home, **not in pots or planters**. If bark mulch is used on the site it must be replaced each year. Parking shall occur on the site, only, shall be well defined, and paved to a width of 19 feet, per Rule F.1. Parking location and height to be determined by landlord. No parking to occur on lawns. Unused wood, metal, auto parts, landscape trimmings and junk or not to be stored on the site and must be removed from the Park regularly. A concrete sidewalk must be installed between the driveway and all entry. **Outside storage is prohibited in the park. Further, tenant(s) is not to divert water from his site to neighboring pad sites.**

[…]

> C.2 One, only, shed will be considered for each site. Any shed and all additions and alterations to the home or attachments thereto, including decking or patios, must be compliant with the bylaws, and must be first approved in writing by landlord before submitting same to the [municipal district] for approval. A shed must be no larger than 8 feet by 10 feet nor taller than 8 feet at the peak of its **peaked roof** and have a 30 inch t 36 inch wide concrete walkway to it. Any shed and additions must be sided to match the home and have the same roofing. All steps and decks must be non slip, built to Code and have railings complete with pickets to match those on Homes #5, #40 or #60 and must be painted or stained, per B.8.
>
> NOTE: **No outside storage is permitted in the Park**. Only one shed is permitted on the site which must be located behind the home and, in the event the tenant goes ahead with the addition or improvement without first submitting plans and gaining approval in writing from landlord to proceed, a fee of $50 per day will be charged to the tenant until plans are submitted and approved. If landlord deems it necessary to go onto the site to remove any fills or unapproved sheds or improvements, all costs of such removal and disposal upset improvements or sheds shall be charged to the tenant and do with the next rent payment.
>
> [all emphasis original]

JN testified that the landlord updates the Rules frequently.

Prior to issuing the Notice, the landlord provided many warning letters and demands to tenant regarding violations of the Park Rules.

On October 31, 2015, JN sent a letter to tenant JB In which he confirm the conversation he had with the tenants. He wrote:

> It was nice to meet with you this fall - October 1, 2015. It was also terrific to hear that you are going to undertakes some changes/improvements to your home and pad site, much of which we had talked about earlier this year. Those improvements include the demolition and replacement of one of your sheds, the removal of the other shed, the removal of particle board where used for siding on your addition and replacement of same with siding to match that of your home, the removal of particleboard used instead of pickets around the deck on the east side of your home and the replacement of it with proper pickets, and their removal of some of the gravel at the front of your pad site and replacement of it with topsoil and grass.
>
> What we didn't discuss was the need to repaint the trim and darker colour on the siding of your home - the colour has faded and is in need of repainting. Please

> note that you are to use a soft earth tone colour per Rule B.8 of the rules of [CRC].

On January 15, 2017, the landlord wrote another letter to the tenants asking them to make further repairs. He demanded that these repairs be made by July 31, 2017. These repairs included:

- Replace siding per Rules A.6, B.8, and C.2.
- Power wash and repaint in earth tone colours approved by the landlord the siding, trim, and gutters per Rule B.8.
- Move the satellite dish to the rear of the home per rule B.4.
- Replace aluminum and single-glazed windows with vinyl frame double-glazed windows, which are to be white to match the rest of the Manufactured Home per Rule A.8.
- Replace railings and pickets, stained or painted and approved colours and using approved materials, per Rule C.2.
- Surface landings and steps of the Manufactured Home with nonslip materials per Rules A.6 and C.2.
- Remove gravel from the front and side of the Manufactured Home and replace it with grass and landscaping per Rule B.11.

On February 27, 2018 the landlord reiterated these requests, writing:

> I notice that you failed to undertake many of the repairs needed to your home, repairs detailed in my letter to you dated October 31, 2015. You cannot ignore our letters or notices nor your responsibilities in this regard. Therefore this is an official notice to complete the following items by May 31, 2018.

On March 21, 2019 the landlord issued a “notice to unit” following an inspection of the Site. It stated:

> I have discovered that there is no such thing as “grandfathering” in the Manufactured Home Park Tenancy Act. So you must move your RV trailer from pad site to our RV storage area. Further you have failed to remove the gravel from your front yard and remove items stored outside your unit and shed in violation of the rules of the park.
>
> The siding and roof on your shed do not match those on your unit in violation of Rules A.6 and C.2; And the siding and trim on your home are dirty and in need of power washing and painting (as you had proposed) and as required in Rules A.6 and B.8.
>
> There are gaps below your skirting because you have failed to install the skirting vertically in violation of Rule A.7 and it is dirty, the vents are rusting and in both are in need of replacing, per Rules A.6 and A.7.

> You must extend your rainwater leaders to direct water away from the house and underground via 4-inch PVC piping to a drainage course as directed by the landlord, per Rule A.6.
>
> Add a 4-inch by 4-inch pressure treated sleeper between the gravel adjacent to your skirting and lawn where you have not planted flowers, per Rule B.11 and plant flowers across the front of your home. Also, your cedar hedging is getting overgrown, it must be trimmed, per Rules B.2 and B.11. Harassment of our manager must stop.
>
> The harassment of our manager must stop immediately, you must move your RV by June 30, 2019 and all the above items repaired by October 31 on the 2019.

The landlord served the tenants with a letter on February 21, 2020, relating to storage of garbage bins. It stated:

> We would ask that you store [the garbage bins] in an enclosure around the back of your home so that they are out of sight, per Rule B.7. Please do not store them on your driveway or at the front of your home. If you have a fence that they can be placed behind and they are out of sight, that is also acceptable until you can build an enclosure, per Rule B 7. We would be happy to help you find an appropriate location for your enclosure. Please prepare a sketch of your proposed enclosure and a plan showing where you would like to locate it for our approval before you BUILD OR PURCHASE SAME.
>
> [emphasis original]

On March 12, 2021, the landlord issued another “notice to site”. It stated:

> You have failed to remove the gravel in your front yard, in spite of my letter to you of February 18, 2018, and remove 14 inches of grass from around your home and replace it with a buffer strip, in violation of the rules of the park, in particular Rules A.7, B.2, and B.11.
>
> You have failed to maintain the siding, and the trim boards around your windows, the posts, the railings and pickets around your decks in violation of Rule B.8.
>
> You have failed to install your skirting vertically per rule A.7. As a result it does not meet the ground, leaving a gap between the ground and skirting. You have also failed to keep the skirting in good repair, in violation of the Rules.
>
> You have failed to maintain the rainwater gutters, and failed to extend rainwater leaders to direct water away from the home and underground via 4 inch PVC piping to the drainage course as directed by the landlord, per Rule A.6.

> You have failed to construct a garbage and recycling closure, and you have failed to construct a 30-inch-wide concrete walkway to the enclosure and your shed per Rule B.7.
>
> You have installed non-standard railings and pickets around the decks and violation of Rule C.2.
>
> This is a formal notice to remove the gravel from the front yard; Replaced the skirting with vinyl, installed vertically to meet the ground; Remove the gravel; And to correct all other violations of the rules by May 31, 2021.

On July 2, 2021 the landlord sent a final “notice to unit”. It stated:

> You have moved a large RV trailer onto the site without our approval, and have failed to remove the gravel around your front yard in violation of the rules and in spite of our previous notices and letters to do so. You have also failed to trim your hedging per Rule B.11. the RV must be removed from the park, gravel removed from the front yard and the hedging trim by July 21, 2021.
>
> The siding and roof of your shed does not match that on your home and you have failed to paint the post and trim at your main entry in violation of Rule B.8. These must be repainted by July 31, 2021
>
> You have failed to install your skirting vertically as per Rule A.7. As a result, the skirting does not meet the ground leaving a gap between the ground and skirting. You have also failed to keep the skirting in good repair in violation of Rule B.8.The skirting must be replaced with the insulated vinyl skirting designed for that purpose by August 15, 2021 per Rule A.7.
>
> You have failed to extend your rainwater leaders to direct water away from the home and underground via 4-inch PVC piping to a drainage course as directed by the landlord, per rule A.6. This must be done by August 31 2021.
>
> You have failed to construct a garbage and recycle bin enclosure, and you have failed to install a 30-inch-wide concrete walkway to that enclosure and your shed, per Rule B.7. You must complete these by August 31, 2021.
>
> This is final notice to do the work specified above by the dates provided. If these are not done by those dates, we will issue a notice to vacate.

As stated above, the landlord issued the Notice on August 28, 2021.

JN testified that the current park manager had multiple interactions with the tenants regarding their breaches of the Park Rules, and that during these interactions tenant JB frequently yelled at the park manager or harassed him.

The landlord provided a letter dated December 6, 2021 from the current park manager and another dated December 1, 2021 from the former park manager.

The current park manager stated that that the tenants “are convinced that they don't have to follow the rules of the park. And they have misled a group of their neighbors convincing them that they, too don't have to follow the rules of the park nor repair or clean up their homes and pad sites.” He wrote that JB told him that he was not going to do the required maintenance or repairs and that the Site was to be “maintenance free”.

The manager recounted events between April 1, 2019 and November 29, 2021 relating to JB approaching him regarding the aforementioned letters or pieces of communication listed above, complaining about them and “yelling”, “swearing” and “ranting” at the manager. He testified that he overheard JB counseling other occupants of the Park that they did not have to comply with the Park Rules. On one occasion, he stated that JB threatened to sue the landlord for “chasing him to repair his home, remove gravel from his front yard and remove his new RV.”

The former park manager stated that he approached the tenants in 2015 to undertake the repair setup above, but the tenants refused to do it stating that they were “grandfathered”. He wrote that JB “threw [the February 2018] letter at his wife, swore and yelled at her that he didn't have to do anything to his home or site because he was grandfathered” (no evidence from the former park manager’s wife was provided). He testified that he retired as park manager in April 2018, but recently he and his wife were approached by tenant JB to join him in several others in opposing the landlord and the rules established in the park. The former park manager speculated that this was a violation of his right to quiet enjoyment.

The landlords argued that the tenants conduct towards the former and current park managers amounts to an unreasonable disturbance of the landlord.

The landlords argued that the Park Rules are material terms of the tenancy agreement, and that by failing to comply with them after multiple written requests to do so, the tenants have breached a material term of the tenancy agreement.

The landlords argued that as the tenants refused to do the work requested in the correspondence between 2015 and 2021, the tenants have failed to make repairs as required by the Act.

The landlords submitted that the tenants clearly understood that the Park Rules apply to them, as during JB’s tenure as park manager, he enforced those rules. The landlords asserted that they had the right to create rules to govern the Park, and that the tenants were obligated to follow them.

I asked the landlord how all of the terms in the Park Rules could be considered material terms, if these terms did not exist at the time the tenancy was entered into, and as the landlord could change them at will (and, by JN's admission made regular revisions to the Rules). JN responded that all terms of the Park Rules go towards protecting tenants quality of life in the Park, as such they were all material terms.

The tenants denied that they incited anyone to break the Park Rules. Rather, they stated that they only advised people that if they disputed the rules that they should contact the Residential Tenancy Branch (the "**RTB**"). They denied that they harassed or abused any of the landlord's staff. Rather, they stated that JB had discussions with the staff regarding the applicability of the Park Rules and that he and the landlord's staff had disagreements. JB is hard of hearing and wears hearing aids, and consequently he speaks loudly. The tenants' council suggested that this loud manner of speaking might have been construed as yelling by the park managers and asserted that this did not rise to the level of an unreasonable disturbance.

The tenants sold the RV and it was removed from the Site in September 2021. The tenants stated they are in the process of removing the gravel from the front of the Site and re-seeding it. However, they argue that they are not required to do this by the Park Rules.

They testified that the Site and the Manufactured Home are well maintained and in good repair. They submitted a number of photographs which depict a reasonably well-maintained Manufactured Home located on the Site.

The tenants' counsel argued that the work that the landlords were asking the tenants to do was not "repairs of damage" but were rather in the nature of "upgrades". The tenants commissioned an inspection report and submitted a copy dated September 13, 2021 into evidence. The report stated:

> [The inspector] conducted an inspection of the home, the inspection was performed by direct observation of existing conditions reasonably apparent at the time of the inspection in accordance with the Applied Science Technologists & Technicians of British Columbia Property Inspection (ASTTBC-PI) Standard of Inspection. The exterior/building envelope of the home was examined for general condition and to determine if any exterior components of the home were in a state of disrepair.
>
> Observations:
>
> No defects, no components requiring repair, replacement, or immediate maintenance were observed. See the report contents for further details and photographs.
>
> Conclusion:

> The envelope of the building is in good condition and no need for immediate repairs or maintenance were noted.

The landlord argued that this report was restricted solely to whether the Manufactured Home was structurally sound, not whether it was in compliance with the Park Rules. As such, he argued that it was not relevant to this application.

The tenants' council argued that some of the work demanded by the landlord (including pouring a concrete walkway and extending the rainwater leaders, which requires digging a trench) require the tenants to make significant upgrades to the landlords' property. As such, he argued that the Park Rules requiring these were unconscionable. Additionally, he argued that any rule which required the tenants to replace "perfectly good" items and upgrade them to meet with the landlords' aesthetic standards was similarly unconscionable.

Additionally, the tenants argued that any Park Rule which required the tenants to make cosmetic or aesthetic upgrades to the rental unit could not be "material" terms of the tenancy agreement as they related solely to the aesthetic quality of the Manufactured Home and the Site.

Finally, he argued that any breach of the Park Rules Should not automatically give rise to issuing an eviction notice. Rather he submits that an appropriate course of action would be for landlord to make an application to the RTB for an order to comply with the Park Rules. At the hearing, I advised the parties that the scope of this application was restricted solely to the validity of the notice, and the issue of whether the tenants must "comply" with the Park Rules was not before me.

Analysis

I must preface my analysis by stating that I will not address the validity of any of the Park Rules. Such an assessment is not required for me to render this decision. Rather, I will restrict my analysis to the grounds listed on the Notice. These grounds intersect with the Park Rules insofar as the landlords allege that the Park Rules amount to "material terms" of the tenancy agreement.

The Notice was issued for three discreet reasons:

- The tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord.
- The tenants have not done required repairs of damage to the Site or Park.
- The tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I will assess each in turn.

1. Unreasonable Disturbance

The landlord alleges that tenant JB yelled, swore, and acted in an abusive manner towards two of its park managers. The tenants argue that they did not swear or act in an abusive manner towards the park managers. However, they admit that he may have spoken loudly towards them on account of JB having hearing aids and naturally speaking loudly.

The landlords did not call either of the park managers (or the former park manager's wife) as witnesses, so the tenants did not have an opportunity to cross-examine them or put their suggestion that JB was speaking loudly due to being hard of hearing.

Additionally, based on the accounts of the park managers it seems that all of the confrontations between the park managers and tenant JB were in relation to the applicability and enforcement of the Park Rules. It is not uncommon landlords and tenants to engage in heated discussions about rules and expectations one or either party during a tendency. These specific Park Rules are detailed, and invest a significant amount of authority and discretion in the landlord. Given their nature, it is not unreasonable for Rules such as these to be the source of conflict between parties, and I do not find that any heated discussion about these rules amounts to an "unreasonable disturbance" of the landlord or its park manager. Such encounters come with the territory of being a park manager.

Additionally, the landlord argued that the tenants attempt to encourage other occupants of the park to ignore the Rules amount to a significant interference with the landlord. The tenant denies doing this. Landlord has not provided sufficient evidence to establish that the tenants have encouraged their neighbors to break the Park Rules. I should note that it is not an unreasonable disturbance of a neighbor for the tenant to have approached them to see if they would be interested in joining a group of tenants would be interested in discussing possible actions they could take with regard to revising the Park Rules. Such conduct would similarly not be a significant interference with the landlord.

As such, I do not find that the landlord has established it is more likely than not that the tenants unreasonably disturbed the landlords or significantly interfered with the landlords or other occupants of the park.

2. Failure to Repair

Section 26 of the Act states:

> **Landlord and tenant obligations to repair and maintain**
> 26(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas.

> (3) A tenant must repair damage to the manufactured home site or common areas that is caused by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant.

The landlords have not suggested that the tenants have failed to maintain reasonable health, cleanliness, and sanitary standards on the Site. Rather, they claim that the tenants are obligated to make repairs to the Manufactured Home and to the Site so as to bring them to the standard required by the Park Rules. They argue that the tenants have failed to do this, and consequently they are entitled to issue the Notice.

Section 40(1)(f) of the Act states:

> **Landlord's notice: cause**
> 40(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> […]
>
> (f) 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;

Significantly, both this section and section 26 of the act require that a tenant repair *damage* to a manufactured home site. Additionally, both of these sections are silent as to repairing damage to the manufactured home itself. Accordingly, any deficiency which the landlords argue exist with the manufactured home itself cannot form the basis for issuing the Notice.

Furthermore, the deficiencies the landlords allege exist with the manufactured home site (such as a lack of concrete walkway, or the presence of gravel as opposed to grass, or presence of a shed that does not match the manufactured home) are not allegations of *damage* to the manufactured home site. Rather they are objections to the aesthetic qualities of elements which the tenants have installed, or declined to install or replace, on the Site.

I do not find that any of the items that the landlords have requested the tenants to change on either the Manufactured Home, or the Site, amount to damage that the tenants are obligated to repair pursuant to section 26 of the ct.

3. Breach of a Material Term

The landlords argue that each of the Park Rules are material terms of the tenancy agreement, and that the tenants have breached several of them.

Before determining if the tenants have breached any of these terms, I must first determine f the terms themselves are “material”.

RTB Policy Guideline 8 discusses is material terms. It states:

> 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.
>
> To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

I accept JB's testimony that the tenants moved into the Park in 2001. He and tenant MB have first-hand knowledge as to the date they moved in, whereas JN must rely on documents the landlords received from the prior owner of the Park.

The document the landlords tendered as proof of the start date of the tenancy (which they say is October 1, 2004) indicates that JB is an agent of the landlord. I do not think it likely, in the event that this document is genuine (which I explicitly make no finding on), that JB would be an authorized agent of the landlord prior to establishing residency in the Park. Rather I find it more likely that he would have become the authorized agent after living in the Park, and that once the tenants were established as residents, the then-landlord would have wanted to memorialize the existing tenancy agreement in writing.

Neither party has provided any evidence as to whether the Park had Rules in 2001 or 2004, and if they did, what those Rules might have been.

As such, I cannot find that any term in the Park Rules is “so important that the most trivial breach of that term gives the other party the right to end the agreement”. If any of these terms were so important, they would have formed part of the agreement from the outset. Additionally, I cannot see how any of the Park Rules could amount to a material term, given that the landlords have the authority to revise or modify them at their sole discretion (something they have done frequently, on JN’s own evidence).

Accordingly, due to the fact that the landlords have failed to establish that any of the Park Rules existed at the start of the tenancy and as the landlords can and have changed them frequently, I do not find that any of the Park Rules are “so important that the most trivial breach of that term gives the other party the right to end the agreement”. As such, they are not materials terms of the tenancy agreement and I cannot find that the tenants have breached a material term which would warrant ending the tenancy.

This is not to say that a tenancy can never be evicted due to breaching Park Rules. Section 32 of the Act allows a landlord to establish Park Rules, and section 55 of the Act may allow an arbitrator to make an order that a tenant comply with a Park Rule. If a

tenant is ordered by an arbitrator to comply with a Park Rule, and refuses to do so, the landlord may issue a notice to end tenancy for cause, pursuant to section 40(1)(k) of the Act which states:

> **Landlord's notice: cause**
> 40 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
> (k)the tenant has not complied with an order of the director within 30 days of the later of the following dates:
> (i)the date the tenant receives the order;
> (ii)the date specified in the order for the tenant to comply with the order.

In this case, the landlords have not made an application for the tenants to comply with any of the Park Rules, so I make no such order.

For the reasons set out above, I find that the Notice was not issued for valid reasons. I order that the Notice is cancelled and of no force or effect.

Pursuant to section 72(1) of the Act, as the tenants have been successful in the application, they may recover the filing fee ($100) from the landlords. Pursuant to section 65(2) of the Act, the tenants may deduct $100 from one future months' rent in satisfaction of this amount.

Conclusion

I dismiss the landlords' application, in its entirety.

I order that the Notice is cancelled and of no force or effect. The tenancy shall continue.

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: May 6, 2022

Residential Tenancy Branch