Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKLAND MANUFACTURED HOME PARK and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, CNC, OLC, MNDCT, LRE, PSF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 22, 2022 (the "Application"). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause (the "Notice")
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- For compensation for monetary loss or other money owed
- To suspend or set conditions on the Landlord's right to enter the rental site
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law
- To recover the filing fee

This matter came before me June 02, 2022, and an Interim Decision was issued the same date. This Decision should be read with the Interim Decision.

As stated in the Interim Decision, I am only dealing with the dispute of the Notice and request to recover the filing fee.

The Tenant appeared at the hearing. J.M. and C.S. appeared at the hearing for the Landlord with Legal Counsel. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Tenant provided affirmed testimony.

The Tenant sought to call their mother as a witness at the hearing. I asked the Tenant to explain the relevance of their mother's anticipated testimony to the dispute of the Notice and the Tenant could not explain this; therefore, I did not hear from the Tenant's mother.

The Landlord was permitted in the Interim Decision to submit further evidence. The Tenant confirmed receipt of the Landlord's further evidence and confirmed there were no issues with service.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Preliminary Issue: Jurisdiction

At the first hearing, the Tenant submitted that the *Manufactured Home Park Tenancy Act* (the "Act") does not apply to the parties because the Tenant is not a tenant of the Landlord. The Landlord submitted that the *Act* does apply, and the Tenant is a tenant of the Landlord pursuant to the written tenancy agreement submitted.

The Tenant submitted that they are not a tenant of the Landlord because they do not own the home on the site. Further, the Tenant testified that they did not know they were signing a tenancy agreement with the Landlord when they signed the written tenancy agreement submitted. The Tenant could not point to further evidence to support their testimony that they did not know they were signing a tenancy agreement. The Tenant also argued that the tenancy agreement was not valid because they did not receive a copy of it. At the second hearing, the Tenant stated for the first time that they did not sign the written tenancy agreement submitted. The Tenant had already acknowledged signing the written tenancy agreement at the first hearing.

In reply, Legal Counsel submitted that the Landlord did give the Tenant a copy of the written tenancy agreement.

I found the Tenant is a tenant of the Landlord and the *Act* does apply for the following reasons.

I do not accept that the Tenant did not sign the written tenancy agreement in evidence because the Tenant's initials and signature are on the agreement. Further, the Tenant

acknowledged at the first hearing that they did sign the agreement and did not state otherwise until the second hearing after I gave my decision on jurisdiction. In the circumstances, I do not find the Tenant's testimony about not signing the agreement credible.

I do not accept that the Tenant did not know they were signing a tenancy agreement because the first page of the agreement states at the top centre in bold, "MANUFACTURED HOME SITE TENANCY AGREEMENT". Further, the Tenant initialled page two of the agreement and signed page eight of the agreement which indicates that the Tenant read the agreement. I find it very unlikely that the Tenant initialed and signed an eight-page document without knowing what it was because I find this is contrary to common sense.

Whether the Tenant owns the home on the site is not relevant to whether the Tenant is a tenant of the Landlord. Section 1 of the *Act* defines a "tenancy agreement" as:

> "tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting **possession of a manufactured home site**, use of common areas and services and facilities (emphasis added)

The issue as to whether there is a tenancy agreement between the parties is who rented the site from the Landlord. I find the Tenant rented the site from the Landlord pursuant to the written tenancy agreement submitted.

I also note that RTB Policy Guideline 09 states:

> D. RENTING A SITE WITHOUT A MANUFACTURED HOME
>
> A tenancy agreement may exist when a landlord and tenant enter into a tenancy agreement for a manufactured home site that the tenant is entitled to bring a manufactured home to. This tenancy agreement may be binding even if there is no home on the site.

Given the *Act* can apply where there is no home on the site rented, I find the *Act* applies even if the home on the site is owned by someone other than the tenant who rented the site from the landlord. The subject matter of a tenancy agreement under the *Act* is the site, not the home.

I acknowledge that section 13(3) of the *Act* states that a landlord must give a tenant a copy of a tenancy agreement. Here, the parties take conflicting positions about whether the Landlord gave the Tenant a copy of the written tenancy agreement. Regardless of whether the Landlord gave the Tenant a copy of the written tenancy agreement, the Tenant is a tenant of the Landlord. The Landlord failing to provide a copy of the written tenancy agreement to the Tenant does not invalidate the agreement which is clear from the fact that tenancy agreements can be oral as stated in section 1 of the *Act*. If tenancy agreements can be oral, they are certainly not invalidated when they are in writing and one party does not receive a copy of the agreement.

Preliminary Issue: Amending Notice

Legal Counsel for the Landlord sought to amend the Notice at the second hearing to add grounds that were not checked off on the Notice. Legal Counsel relied on section 61 of the *Act*. Legal Counsel submitted that it should have been clear to the Tenant based on letters and notices provided that the Landlord was seeking to end the tenancy on the basis that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the park and seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant. Legal Counsel submitted that there is no prejudice to the Tenant in amending the Notice because the Tenant should have been aware of the additional grounds based on the letters and notices sent to them.

The Tenant submitted that the Notice should not be amended because it was not clear that the Landlord sought to end the tenancy based on the additional grounds.

Section 61 of the *Act* states:

> 61 (1) **If a notice to end a tenancy does not comply with section 45 [form and content of notice to end tenancy]**, the director may amend the notice if satisfied that
>
> (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
>
> (b) in the circumstances, **it is reasonable** to amend the notice.

(2) Without limiting section 55 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act…

(b) set aside or **amend** a notice given under this Act **that does not comply with the Act.**

I decline the Landlord's request for two reasons. First, I find section 61 of the *Act* is meant to address situations where the notice to end tenancy does not comply with the *Act*, which is not the situation here. I do not find section 61 of the *Act* is meant to allow for the Landlord to add grounds to the Notice at the hearing.

Second, I find it extremely prejudicial and unreasonable to amend the Notice at the second hearing because there would have been no reason for the Tenant to prepare to address additional grounds for ending the tenancy at the hearing. Further, I do not accept that it would have been obvious to the Tenant that the Landlord sought to end the tenancy on additional grounds because if the Landlord sought to do this, the reasonable conclusion would be that the Landlord would have checked off the additional grounds in the Notice.

Issues to be Decided

1. Should the Notice be cancelled?

2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

As stated above, I find the written tenancy agreement between the parties submitted by the Landlord is valid and is the current tenancy agreement. The Tenancy started October 01, 2020.

The Notice was submitted. The ground for the Notice is breach of a material term. The details on the Notice state:

> Tenant erected a fence outside the allowable area without prior permission, and refused to remove it
>
> Refused to move RV out of compound
>
> Threatened Landlords

Legal Counsel advised that the Notice was posted to the door of the Tenant's home February 10, 2022. The Tenant testified that they received the Notice February 13, 2022.

Legal Counsel advised that the Landlord sought to end the tenancy for breaches of terms 10, 11, 13 and 15 in the tenancy agreement.

I read out the requirements for a breach letter set out in RTB Policy Guideline 08 and asked Legal Counsel if the four requirements were met in any of the correspondence sent to the Tenant about the issues outlined in the Notice. Legal Counsel acknowledged there were no letters or notices issued to the Tenant that refer to a breach of a material term. Legal Counsel relied on the following to fulfill the requirements of RTB Policy Guideline 08 in relation to a breach letter: a letter dated February 01, 2022; a text message dated September 18, 2021; a letter dated October 10, 2021; a letter dated November 11, 2021; an email dated November 14, 2021, and a letter dated February 02, 2022.

Legal Counsel provided written submissions. In relation to a breach letter, the written submissions outline the same correspondence referred to by Legal Counsel during the hearing and outlined in the above paragraph.

The Tenant testified that they never received any correspondence from the Landlord stating they had breached a material term of the tenancy agreement.

Analysis

The Notice was issued pursuant to section 40 of the *Act* and the following subsection:

> 40 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(g) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time **after the landlord gives written notice to do so**…(emphasis added)

RTB Policy Guideline 08 addresses material terms and states:

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.

(emphasis added)

The Tenant had 10 days to dispute the Notice pursuant to section 40(4) of the *Act*. Based on the testimony of the parties, I accept that the Tenant received the Notice February 13, 2022. The Application was filed February 22, 2022, within time.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

Section 40(g) of the *Act* sets out the specific circumstances in which the Landlord can end this tenancy for breach of a material term. Section 40(g)(ii) of the *Act* required the

Landlord to have given the Tenant written notice about the alleged breaches. RTB Policy Guideline 08 sets out the requirements of the written notice. I find the four requirements for a breach letter set out in RTB Policy Guideline 08 to be mandatory, not permissive, because of the use of the word "must" in relation to what the party alleging a breach must inform the other party of in writing. RTB Policy Guideline 08 is clear that the breach letter must state that the party alleging a breach believes the problem outlined is a breach of a material term of the tenancy agreement. I find this requirement important because it signals to the receiving party that the other party is specifically alleging a breach of a material term of the tenancy agreement and thus may seek to end the tenancy pursuant to section 40(1)(g) of the *Act* versus some other section such as the Tenant causing a significant interference with or unreasonable disturbance of another occupant or the Landlord of the park. I find the breach letter important to put the receiving party on notice about the position of the alleging party and so that the receiving party clearly understands the intention of the alleging party if they do not comply with the breach letter.

I have read the letters dated October 04, 2021, November 11, 2021, February 01, 2022, February 02, 2022, as well as the text message dated September 18, 2021, and emails dated October 10, 2021, and November 14, 2021. None of this correspondence meets the requirements set out in RTB Policy Guideline 08 for a breach letter. Most notably, none of the correspondence states that the Landlord believes the problems outlined are breaches of material terms of the tenancy agreement. I find Legal Counsel acknowledged that none of the correspondence states that the Landlord believes the problems outlined are breaches of material terms of the tenancy agreement during the hearing when asked.

I find the Landlord did not issue the Tenant a breach letter in accordance with RTB Policy Guideline 08 and therefore did not yet have grounds to issue the Notice on the sole basis of breach of a material term of the tenancy agreement. Given this, I cancel the Notice. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenant has been successful in the dispute of the Notice, I award the Tenant $100.00 as reimbursement for the filing fee pursuant to section 65(1) of the *Act*. Pursuant to section 65(2) of the *Act*, the Tenant can deduct $100.00 from their next rent payment.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*. The Tenant can deduct $100.00 from their next 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 *Act*.

Dated: June 22, 2022

Residential Tenancy Branch