



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SPRUCE CAPITAL TRAILER PARK LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Code CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on April 14, 2022. The Tenant applied for an order cancelling a One Month Notice to End Tenancy for Cause dated April 4, 2022 (the One Month Notice), pursuant to the Manufactured Home Park Tenancy Act (the Act).

The Tenant attended the hearing and was accompanied by PH, an occupant, and JM, a legal advocate. The Landlord was represented at the hearing by MC and SC, agents. All those giving testimony provided a solemn affirmation.

On behalf of the Tenant, JM confirmed the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail. MC acknowledged receipt on behalf of the Landlord.

On behalf of the Landlord, MC testified the evidence upon which the Landlord relied was served on the Tenant by registered mail. JM acknowledged receipt on behalf of the Tenant.

No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 64 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution hearings.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Tenant entitled to an order cancelling the One Month Notice?

Background and Evidence

The parties agreed the tenancy began on January 1, 2019 and that pad rent of \$376.00 per month is due on the first day of each month. A copy of the tenancy agreement signed by the parties on January 20, 2019 was submitted into evidence.

On behalf of the Landlord, MC testified the One Month Notice was served on the Tenant by attaching a copy to the Tenant's door on April 6, 2022. The Tenant's application acknowledges receipt on that date. The One Month Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The One Month Notice was issued on the basis that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The burden to provide evidence in support of the One Month Notice rests with the Landlord.

MC testified that the Tenant needs to clean up the yard, and that traffic and activity to and from the Tenants site is excessive. MC referred to warning letters to the Tenant dated May 25, 2020, August 18, 2020, and March 16, 2021.

Further, SC testified that the Tenant has broken park rules and permitted someone to live in the unit without approval. A warning letter dated March 26, 2021 was submitted into evidence.

SC also testified that the RCMP has attended the park on a number of occasions and is worried about children who live there. A warning letter to the Tenant dated March 1, 2022 was submitted into evidence.

In reply, JM stated that the Tenant is 66 years old and has limited income, which has impacted the Tenant's ability to rectify some of the Landlord's concerns.

With respect to debris left in the Tenant's site, JM advised that the Tenant cleaned debris from the site in April 2022 and that MC advised it was satisfactory. Photographs of the site, taken in June 2022, were submitted in support.

With respect to other occupants living at the site, JM advised that this arrangement was allowed by the previous park manager. In any event, JM confirmed the occupants moved out in April 2022.

In addition, JM advised that a taxi was used by one of the previous occupants to get to and from work. JM referred to correspondence from the previous occupant in support.

JM also referred to issues not raised in the Landlord's testimony. First, with respect to a truck and trailer left in the park, JM acknowledged that a truck belonging to a friend of the Tenant broke down but that it was removed from the park soon after. Second, JM advised that a boat left in the park did not belong to the Tenant. Third, JM advised that there was no shooting in the Tenant's unit, although MC responded by stating there was a shooting in the area.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 40(1)(g) of the Act permits a landlord to take steps to end a tenancy on the basis that a tenant has breached a material term of the tenancy agreement and has not corrected it within a reasonable time after written notice to do so.

Policy Guideline #8 provides direction when determining whether a term is material. 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.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

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.

In this case, I find there is insufficient evidence before me to conclude the Tenant breached a material term of the tenancy agreement. I was not referred to any specific term of the tenancy agreement that was held out to be a material term. Rather, the Landlord provided evidence of a number of breaches of park rules. Although I accept

that the Tenant has broken park rules, I find there is insufficient evidence that any of these violations amounted to a breach of a material term such that the most trivial breach of that term gave the Landlord the right to end the tenancy.

Considering the above, I find that the One Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the Act.

Conclusion

The One Month Notice is cancelled and is of no force or effect. The tenancy will continue until otherwise ended in accordance with the Act.

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: August 15, 2022

Residential Tenancy Branch