



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #910079697: CNC

File #910081641: OPC

Introduction

The Tenant seeks an order pursuant to s. 40 of the *Manufactured Home Park Tenancy Act* (the “Act”) to cancel a One-Month Notice to End Tenancy signed on July 16, 2022 (the “One-Month Notice”).

The Landlord files its own application seeking an order of possession pursuant to s. 48 of the *Act* after issuing the One-Month Notice.

D.Q. appeared as Tenant and was joined by his partner J.M.. The Landlord was represented by its agents: G.G., K.G., and R.O..

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 64(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Preliminary Issue – Tenant's Style of Cause

At the outset of the hearing I sought clarification from the parties who, in fact, was the Landlord. The Tenant names G.G. as the Landlord but the Landlord names itself as a corporate entity. I am advised by the Landlord's agents that G.G. is the owner of the corporate owner for the manufactured home park. Review of the tenancy agreement also lists the corporate entity as named by the Landlord. I proposed amending the Tenant's application such that the legal name of the Landlord be used as per the guidance of Policy Guideline #43. No objections were raised.

Accordingly and pursuant to Rule 4.2 of the Rules of Procedure, I amend the Tenant's application to correct the naming of the corporate Landlord.

Issues to be Decided

- 1) Should the One-Month Notice be cancelled?
- 2) If not, is the Landlord entitled to an order of possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant began to rent the site on April 1, 2020.
- Rent of \$525.00 is due on the first day of each month.

A copy of the tenancy agreement was provided to me by the Landlord. I have also been provided with a copy of the park rules, which was signed by the parties at the outset of the tenancy.

The Landlord's agents advise that the One-Month Notice was personally served on the Tenant on July 16, 2022. The Tenant acknowledges receipt of the One-Month Notice but cannot recall specifically when he had received it.

I have been provided with a copy of the One-Month Notice. It lists the cause for ending the tenancy due to the Tenant or a person permitted on the property by the Tenant had

caused extraordinary damage to the site or park. In the section in which the Landlord is to describe the details for the cause, nothing is written.

I am advised by the agents that the One-Month Notice was issued by the Landlord due to the Tenant operating a commercial business at the park without the Landlord's consent. The agents framed the business as a breach of the tenancy agreement. Both the tenancy agreement at clause 15 and clause 8 park rules prohibit commercial enterprises within the park without the Landlord's written consent.

I am further advised by the Landlord's agents that the notice was also issued due to damage to the electrical system, which they allege was caused by the Tenant. As stated in the Landlord's written submissions, "[t]he primary reason for the 30-day eviction notice is because during the 2-month electrical repair we found out that [the Tenant] was operating his surfboard shaping/carving/painting production business from his garage located in the park on his PAD".

I pointed out to the agents that the Landlord had failed to list the alleged operation of a business within the One-Month Notice for the stated cause for ending the tenancy. R.O. argued that it was omission on the Landlord's part and asked that this be considered.

I am advised by the agents that the Tenant reported issues with electrical service to his pad on May 18, 2022 and that the Tenant had obtained an electrician himself to verify the electrical panel in his trailer. The agents say that they retained their own electrician and, according to the written submissions from the Landlord, made a "best guess" that the underground power supply to the Tenant's pad had failed. R.O. confirmed that only the service to the Tenant's pad had failed. The Landlord's agents indicate the electrical service was replaced with an overhead supply at a cost of approximately \$10,000.00. An invoice from an electrician dated July 29, 2022 provided by the Landlord in its evidence states the following:

SCOPE – TROUBLESHOOT POWER LOSS TO TRAILER. FOUND ONE OF LINES IN THE UNDERGROUND CABLE HAS BEEN DAMAGED OR BROKEN NOT ALLOWING POWER ON ONE OF THE LINES TO REACH THE TRAILER BOX UNDER THE TRAILER.

I am told by the agents that the work took some two months to be completed. Despite this, further interruptions were reported by the Tenant, which the Landlord's agents argue were the result of the Tenant's continued operation of his unauthorized business.

The Tenant denies ever operating a surfboard shaping business at the park. He does acknowledge that he does “glass” or finish surfboards but says this work is undertaken at a commercial space located elsewhere. I am told by the Tenant that he does not do surfboard shaping, rather ordering shaped boards from a manufacturer.

The Tenant testified that he never had issue with his electrical until the spring of 2022 after the Landlord had undertaken some work repairing the septic system at the park. The Tenant further testified that he recently purchased the trailer such that he was unfamiliar with the electrical circuits. The Landlord’s agents confirmed the septic system was repaired in early 2022.

I am told by the Tenant that the subsequent power issues following the repair by the Landlord were the result of a faulty circuit on the Tenant’s panel, which the Tenant says had always been off but must have been switched by the various electricians that came to his trailer. He says an electrician he hired to look at his panel discovered the problematic circuit and decommissioned it. Since that was done, the Tenant reports no further issues.

The Tenant and his partner allege the Landlord is attempting to end his tenancy as they wish to redevelop the land. I am told the Landlord issued a notice to end tenancy to an adjacent site. The Landlord’s principal advises that it has made no secret to the Tenant that the Landlord intended to redevelop the land, having told him of this at the outset of the tenancy.

The parties confirm the Tenant continues to reside at the rental site.

Analysis

The Tenant seeks to cancel the One-Month Notice. The Landlord seeks an order of possession.

Under s. 40 of the *Act*, a landlord may end a tenancy for cause by given a tenant at least one-month’s notice to the tenant. Under the present circumstances, the Landlord issued the notice to end tenancy pursuant to s. 40(1)(e), which is due to extraordinary damage to the site or park. Upon receipt of a notice to end tenancy issued under s. 40, a tenant has 10 days to dispute the notice. If a tenant files to dispute the notice, the onus of showing the notice is enforceable rests with the landlord.

Though the Tenant does not recall when he received the One-Month Notice, I accept that it was personally served on him on July 16, 2022 as per the testimony of the Landlord's agent R.O.. I find that the One-Month Notice was served in accordance with s. 88 of the *Act* and was received on July 16, 2022.

Upon review of the information on the Tenant's file and in consideration, I find that the Tenant filed his application on July 22, 2022. Accordingly, I find that the Tenant filed his application disputing the One-Month Notice within the 10 days permitted to him under s. 40(4) of the *Act*.

As per s. 40(3) of the *Act*, all notices issued under s. 40 must comply with the form and content requirements set by s. 45. I have reviewed the One-Month Notice and find that it complies with the formal requirements of s. 45 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33). The Landlord lists August 24, 2022 as the effective date, which is incorrect as rent is due on the first day of each month. Despite this error, the effective date is automatically corrected to August 31, 2022 as per s. 46 of the *Act*.

The Landlord's agent asks that I add the additional cause that the Tenant had breached the tenancy agreement by operating a business at the site. Section 61 of the *Act* permits the amendment of a notice to end tenancy that does not comply with s. 45 if the person who received the notice knew or ought to have known information was omitted and it would be reasonable to amend the notice. In this instance, the Landlord's request is not permitted by s. 61 of the *Act*. There is no obvious omission from the notice other than the Landlord's oversight to list all the causes it wanted within the notice. Further, it would be unreasonable to correct the oversight as the Tenant would have had no idea why the cause was not listed by the Landlord. I decline the Landlord's request to include an additional cause into the notice, which it failed to specifically state.

The notice was issued due to an allegation that the Tenant caused extraordinary damage to the park's electrical service. However, there is no evidence that this is the case. The invoice from the Landlord's own electrician states that the cause for the damage was a broken underground cable. Now the Landlord does not allege the Tenant was going around the park digging holes, thereby potentially damaging the underground line. Rather, the allegation is that the Tenant made excessive use of the electrical system by operating a business on his site. I need not make any finding on whether the

Tenant is operating a business at the site as that was not a listed cause within the notice. However, any allegation that the Tenant caused the damage to the electrical system is directly contradicted by the description provided by the Landlord's own electrician. It is far more likely that the underground electrical line was damaged when the septic system was repaired by the Landlord given those repairs were undertaken in early 2022 and the Tenant reported issues with his electrical system, as per the Landlord, on May 18, 2022.

The subsequent power disruptions were explained to be an errant circuit at the Tenant's site from the previous owner. I found the Tenant to provide clear and forthright evidence at the hearing and have no reason to disbelieve his explanation, which is entirely believable. The circuit was decommissioned, such that no further issues have presented themselves.

I find that the Landlord has failed to demonstrate that the Tenant caused extraordinary damage to the site or the park. I grant the Tenant the relief sought and cancel the One-Month Notice.

Conclusion

The One-Month Notice is hereby cancelled and is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

The Landlord's application for an order of possession pursuant to the One-Month Notice is dismissed without leave to reapply.

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: December 16, 2022

Residential Tenancy Branch