Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes. CNC (Tenant)
OPC, FFL (Landlord)

Introduction

This hearing was convened in response to cross applications. The hearing dealt with applications from both the Landlord and the Tenant under the *Manufactured Home Park Tenancy Act* (the "**Act**")

The Tenant applied for relief under the *Act* for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 40.

The Landlord filed a cross-application seeking the following relief under the *Act:*

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

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue: Incorrect Code

The Tenant filed for Dispute Resolution on July 4, 2022 to cancel a Ten-Day Notice for Unpaid Rent. A Ten-Day Notice was not issued, the Tenant chose an incorrect code. I have amended the code to "CNC" a "One Month Notice to End Tenancy for Cause".

Preliminary Issue: Tenant's Cross Application/Non-Service of the NDR

The Tenant filed for dispute Resolution on July 4, 2022, within 10 days of receiving the One Month Notice on July 1, 2022. The Tenant received the Notice of Dispute Resolution (the "**NDR**") from the Residential Tenancy Board on July 15, 2022. The NDR instructs the applicant to provide proof that the NDR and supporting documents were served to the respondent.

Section 82 of the Act establishes the following special rules for certain documents, which include an application for dispute resolution:

> **82** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 6, when required to be given to one party by another, must be given in one of the following ways:
> (a) by leaving a copy with the person;
> (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
> (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
> (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
> (e) as ordered by the director under section 64 (1) *[director's orders: delivery and service of documents]*;
> (f) by any other means of service provided for in the regulations.

The Landlord stated that the Tenant did not serve the Landlord with the NDR. The Tenant stated that he did not realize that he was required to serve the Landlord with the NDR but did respond to the Landlord's NDR with his complete evidence package.

I re-reviewed dismissing the Tenant's application based on non-service of the NDR to the Landlord. Upon further deliberation, I note the following:

- The NDR sent to the Landlord on September 23, 2022 from the Residential Tenancy Branch (the "**RTB**") notified the Landlord of the Cross Application and the hearing scheduled for November 21, 2022.
- The Landlord knew the issues he had to speak to were related to the Notice issued June 29, 2022.
- The elements of the Landlord's application for an Order of Possession (OPC) mirror the Tenant's application to cancel the One Month Notice for Cause (CNC).
- The Tenant responded to the Landlord's NDR and provide his complete evidence package as submitted in the cross application.

Based on the gestalt of the facts and evidence before me, I find to dismiss the Tenant's application on procedural grounds would be unjust in the circumstances. Even though the NDR was not served to the Landlord by the Tenant directly, the Landlord was aware of the Tenant's cross application in the Notice sent to the Landlord by the RTB; therefore, the Landlord was not prejudiced and attended the hearing fully prepared to argue the merits of his application. Based on the above, I deem the Landlord served.

The hearing proceeded accordingly with the Landlord and the Tenant providing affirmed testimony.

The Tenant confirmed receipt of the One Month Notice on July 1, 2022. The Tenant also confirmed receipt of the Landlord's Application for Dispute Resolution (the "**NDR**") and evidence package. The Tenant served his evidence to the landlord in response to the NDR by Canada Post Express. Each Canada Post Tracking number for the mailings are reproduced on the cover sheet.

I find the Tenant duly served with the One Month Notice and the Landlord's Application for Dispute Resolution and evidence package in accordance with s. 82 of the *Act.*

Issues to be Decided

Is the Landlord entitled to:

1) an order of possession pursuant to s. 40 and 48 of the *Act;* and
2) recover the filing fee pursuant to s. 65 of the *Act*?

If the Landlord fails in his application, is the tenant entitled to:

1) an order cancelling the Notice.

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 Tenant, the corporate landlord, and JDN as the corporate landlord's agent (hereinafter referred to as the "**Landlord**") entered into a written month to month tenancy agreement starting November 1, 2009. Monthly rent is $345.00 and is payable on the first of each month. There is an additional $20.00 per month charge for water and sewage removal.

The Landlord testified he served the Tenant with a One Month Notice for Cause on June 29, 2022 with an effective vacancy date of July 31, 2022. The "causes" listed on the Notice are:

- 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 was posted on the door of the manufactured home and also sent to the Tenant registered mail on June 29, 2022. The Tenant confirmed receipt of the Notice on July 1, 2022.

LANDLORD

The Landlord testified this Notice was issued as the Tenant failed to undertake repairs to his home as per a settlement agreement issued on September 13, 2017. The September 13, 2017 hearing was the second hearing on the same issues. On April 29, 2016 a settlement agreement was reached, and the Tenant agreed to undertake various repairs, which the Landlord states have not been completed

By way of background the Landlord referred to his written submission. The Landlord stated that "on September 13, 2017 the Tenant undertook to complete certain repairs on or before December 31, 2017". The Landlord provided a copy of the Decision.

The Tenant undertook to:

1. replace the skirting on the east side of the manufactured home
2. replace the aluminum framed windows with vinyl framed double glazed windows in either a white or off white colour as approved by the Landlord as per rule #A.8 of the Rules of the Manufactured Home Park.

The Landlord, in his written submission, and in oral testimony stated:

> The Tenant was also supposed to complete the deck and steps at the sliding glass door entry, per an agreement reached at our April 2016 hearing, which are still not finished.

The Landlord stated that he extended timelines for the Tenant due to the Tenant's personal financial issues, then the economic turndown in 2019, and also during the pandemic.

> The Tenant started the skirting required, per the Decision, but was unable to finish that or the other items before the end of 2017 and asked for an extension. We granted the extension to complete the skirting and replace the windows, etc. He completed the skirting the following year (but nothing else) and approached us about replacing his unit with a new one, but that, and the other repairs were delayed due to the "economic slowdown in 2019". We did not pursue the Tenant to complete the work during the pandemic lock downs of 2020 and 2021, but our Park Manager has warned him may times this year to complete the windows, etc. without success.

The Landlord also pointed out that the Tenant has not yet installed a landing and steps at the sliding glass entry to the unit as required by the Building Code and the agreement reached at the hearing of April 29, 2016. The Landlord submitted copies of the Building Code along with the Settlement decisions and the Tenancy Agreement.

The Landlord states the Tenant has violated the Tenancy Agreement as well as multiple "Rules of the Manufactured Home Park" arguing the Tenant is in breach of material terms of the Tenancy Agreement, specifically citing Clause 10(b) and (g) which states,

> …the Tenant agrees to the following as *material terms* of the tenancy:
> …..
>
> (b) …the Tenant….will comply with all applicable federal, provincial and municipal laws and regulations pertaining to the Site, the home, and any structures.
> …..
>
> (g) the Tenant will strictly comply with the Park Rules.

The Landlord provided a copy of section B 3.4.6 of the Building code that requires landings and steps at each door/egress from the home.

The Landlord also states the Tenant has violated Rules A.6, A.8, and C.2 which state:

> "All porches, decks, sheds, workshops, steps, fences, and additions to be built on the premises must meet building code requirements"… "All windows must be double glazed with matching vinyl frames in white or off white"…and "All steps and decks must be non-slip, built to code and have railings complete with pickets to match those on Home #5 or #60"….The tenant has also violated Rules A.7 which state, "The Tenant is to add a fourteen inch (14") wide strip of gravel or paving stones between skirting and grass to protect skirting"; and Rule B.7 which states, "Garbage…must be placed in bags within covered plastic containers and confined with in an enclosure…secure from rodents". These are violations of Material Terms of the TA….

Again the Landlord reiterated his frustration with trying to gain compliance. The Landlord states despite multiple verbal warnings, the Tenant has not met the settlement terms. Given the history of non-compliance with settlement agreements, the Landlord seeks an order of possession. They do not trust the Tenant to follow through with any agreements. The Landlord questioned whether the Tenant still lives in the Home Park and believes he only resides there on weekends.

TENANT

The Tenant confirmed that he lives in the home park but leaves the home park for work and can be gone up to three weeks at a time. By way of background the Tenant stated he purchased the manufactured home in 2009 when he was unemployed and on stress leave. He was "fresh out of a divorce with a heavy debt load". He used what little money he had from the sale of the marital property to fix up the inside of the manufactured home.

The Tenant provided little in the way of oral testimony about why he has failed to comply with all the terms of the settlement agreement but referred me to his written submission as provided to the Landlord. The Tenant stated the amount of and cost of the repairs were prohibitive given his limited income and finances. This is what prevented him from completing all the repairs at once and on time. The Landlord agreed to give him extra time to complete the repairs.

The Tenant stated that by December 2017 he had:

- replaced nine (9) windows;
- replaced both porch entrances;
- replaced the skirting all the way around plus twice on the east side because the Landlord did not approve of the skirting.
- spent $1200.00 for a driveway on the Landlord's land.

The Landlord did not dispute the Tenant's oral testimony.

The Tenant wrote that he did not hear from the Landlord since 2017 so he thought everything was taken care of until he arrived home on July 1, 2022 to find the eviction notice posted to his door. I note when the Landlord testified that the Tenant had been repeatedly warned to complete the repairs throughout 2022, the Tenant did not dispute the Landlord's testimony.

Upon receiving the Notice the Tenant states he has:

- repainted, purchased and installed two (2) more windows;
- completed gravel and landscaping ties on outside around the trailer;
- put pickets on main entrance porch and will be adding pickets to secondary porch.

The Tenant wrote,

> I really will be trying to resolve this by replacing the last aluminum window also removing sliding glass window where [landlord] is saying I need a porch in front of it. This sliding window has been in this unit for approximately 25 years and was never considered a entrance.

The Tenant testified that he didn't know the steps, porch, and railings needed to be installed outside the sliding glass door. He was unaware one of the terms of the settlement included installing steps and railings outside the sliding glass door.

The Tenant stated he didn't realize the west side windows were part of the settlement terms and directed me to the April 29, 2016 Settlement Agreement that reads,

> - Replace windows on north and east sides of manufactured home by October 15, 2016.

The Tenant states he replaced the windows as per the April 29, 2016 settlement terms, confirmed by the Landlord who testified that the windows on the west side still required replacement.

The Tenant states that he simply did not have the money to make the repairs and stated, "I have been trying to do this with the limited time I had."

The Landlord and Tenant agreed that if the Landlord succeeds in his application for an order of possession, the Tenant will be given 60 days to find a new pad and move his manufactured home.

Analysis

The validity of the Park Rules are not addressed in this decision. The analysis is limited to the grounds listed on the Notice and if the Notice meets statutory requirements. The Landlord alleges the Park Rules are "material terms" of the tenancy agreement; this forms the limited nexus between the grounds identified on the Notice and the Park Rules.

The Notice was issued for two (2) specific reasons:

- The Tenant has not done required repairs of damage to the site or park.
- 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.

Each ground will be dealt with in turn.

1. **Failure to Repair**

Section 26 of the Act reads:

> **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 Landlord argues that the Tenant failed to comply with the two (2) Settlement Agreements thereby demonstrating a "failure to repair". The Landlord, in the Notice Details of the Event, explains:

> Tenant has failed to do repairs to Unit #13 by the date agreed to during our last Dispute Resolution Hearing and detailed in the Decision dated September 13, 2017. Tenant has been given years to complete the work needed but in spite of that, and our many warnings, has refused to complete the necessary repairs.

The Landlord does not argue the Tenant failed to "maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas" or the Tenant was required to "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". Rather, the Landlord argues that the Tenant didn't comply with the terms of the Settlement Agreements and the Park Rules; therefore, the landlord is entitled to issue a Notice and request an Order of Possession.

Section 40 of the Act allows the landlord to end a tenancy for cause and states in part:

> **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;

It is important to note that both sections 40 and 26 of the Act require a Tenant to repair ***damage*** to a **manufactured home *site***.

The "repairs" the Landlord alleged were required such as "installation of a defined and updated driveway by September 30, 2016" (which are complete) is to maintain an aesthetics of the property not to "repair damage". Further, the other "repairs" as set out in the Settlement Agreements were for compliance with the Home Site Rules specifically to improve the attractiveness of the manufactured

home park. Notably, sections 26 and 40 of the Act do not require the Tenant to repair damage to the manufactured home; therefore ,any deficiency related to the manufactured home itself cannot form the basis of a Notice for Cause.

I find that the outstanding issue of the replacement of the west facing windows on the manufactured home are not "damage" as contemplated pursuant to s. 26 of the Act.

I dismiss the portion of the Landlord's application for an order of possession based on a failure to repair.

2. Breach of a Material Term

Section 40 of the Act allows the landlord to end a tenancy for cause:

> **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;

Policy Guideline 8 explains "Unconscionable and Material Terms"[1] .

> 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. [emphasis added]
>
> 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 on the person relaying on the term to present evidence and argument supporting the proposition that the term was a material term.

The Landlord tendered as proof the Tenancy Agreement, signed and dated November 30, 2009, and points to #10(b) and (g) under the Tenant's Obligations.

Item #10(b) and (g) read in totality as follows:

> In addition to meeting any other obligations under the MHPTA, the Tenant agrees to the following as material terms of tenancy:
>
> ....

[1] https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl08.pdf

> (b) that the Tenant will not perform illegal acts or carry on an illegal trade, business or occupation on the site, the common areas, or the property of which they form a part, and will comply with all applicable federal, provincial and municipal laws and regulations pertaining to the Site, the home and any additional structure, and to save the landlord harmless from any violation of or non-compliance with these laws and regulations and from all fines, penalties, and costs for such violations or non-compliance.
> …..
> (g) that the Tenant will strictly comply with Park Rules. The Tenant further agrees that the Landlord may, upon two weeks written notice, make changes or additions to the Park Rules as deemed necessary for the best interests of the Park and the tenants. The Landlord shall not be liable in the event that any tenant or invited guest does not comply with Park Rules;

I find it significant that the Landlord, in his written submission and oral testimony culled only a specific phrase from Item #10 (b) of the Tenancy Agreement. He quotes Item 10(b) as follows: "the Tenant….will comply with all applicable federal, provincial and municipal laws and regulations pertaining to the Site, the home and any additional structure" .

The primary purpose of clause 10(b) appears to exclude Landlord liability or "hold the landlord harmless" as a legal defense in the event a Tenant fail to comply with a law or regulation that results in a lawsuit. Notwithstanding, the aforementioned, the Landlord provided no evidence that, for example, a bylaw officer visited the site and issued a warning or a bylaw violation notice concerning the landing.

Item #10(g) states a material term of the Tenancy Agreement requires the Tenant to "strictly comply with Park Rules". This clause is vague and fails to differentiate between rules that may be material and those that are not, leaving it to the discretion of the Landlord to decide if a Rule is material.

The clause further states that the Park Rules can be changed by the Landlord's with two weeks' notice. I do not accept that every Home Park Rule, subject to change by the Landlord with two weeks' notice, are each "material" terms.

Given the lack of specificity of Item 10(g) and given the Landlord can change the Rules as frequently or infrequently as he chooses, I do not find that the Park Rules #10 (b) or (g) are "so important that the most trivial breach of that term gives the other party the right to end the agreement." [emphasis added]

Notwithstanding having said this, if, in fact, the Tenant did breach a material term, the Landlord failed to comply with the requirements outlined in Policy Guideline 8 that sets out specific information that must be provided to the party in writing. Although the Landlord argued that his letter of September 17, 2017 set out the expectations, the Landlord waived the timelines and provided no evidence of follow up.

Settlement Agreements of April 29, 2016 and September 13, 2017.

A tenant can be evicted for breaching Park Rules. Section 32 of the Act gives the Landlord the authority to create Park Rules. Section 55 of the Act allows an arbitrator to make an order that a tenant comply with Park Rules. Section 70 of the Act, as pointed out by the Landlord states,

Except as otherwise provided in this Act, a decision or order of the director is final and binding on the parties.

The Landlord and Tenant entered into two (2) separate Settlement Agreements, the first dated April 29, 2016 and a second dated September 13, 2017.

The April 29, 2016 Settlement Agreement reads, in part:

The Parties mutually agreed as follows:

1) The Landlord withdrew his application for an Order of Possession.

…..

3) The parties agreed that the landlord may assign an on-site proxy to attend meetings.

…..

5) The tenant agreed to make repairs as follows:
   a) Repair and install skirting around the entire manufactured home by May 15, 2016. (completed)
   b) Repair and create porch and emergency access railings by May 15, 2016.
   c). Paint the manufactured home as soon as practicable for both parties but by May 31, 2016.(completed)
   d) Installation of a defined and updated driveway by September 30, 2016; (completed) and
   e) Replace windows on north and east sides of manufactured home by October 15, 2016. (completed)

The Arbitrator concluded by stating:

I further order that the tenant comply with the above timelines provided in the settlement agreement for repairs to meet the requirement of the rules of the Manufactured Home Park.

…..

The September 13, 2017 agreement read, in part:

1. The tenant agrees to repair and replace skirting on the East side of the manufactured home such that it reaches the ground as per rule #A7 of the Rules of the Manufactured Home Park. The skirting must be installed vertically to meet the grade. (completed)

2. The tenant agrees to replace the aluminum frame windows with vinyl framed double glazed windows in either a white or off-white color as approved by the Landlord as per rule #A8 of the Rules of the Manufactured Home Park.

3. If the tenant fails to meet the above terms of this mutually agreed to settlement by **1:00 p.m. on December 31, 2017**, the tenant and landlord agree this tenancy will end on this date.

Completion of the following items in the Settlement Agreement remain outstanding as alleged by the Landlord:

- Repair and create porch and emergency access railings by May 15, 2016.
- Replacement of windows on the west side of the manufactured home.

The Tenant argues that he replaced the windows as stipulated in the April 29, 2016, Settlement Agreement and built two (2) porches with railings outside the two (2) main access/egress doors of the manufactured home.

Along with the Settlement Agreement of September 13, 2017, the Landlord was issued an Order of Possession that may be filed and enforced as an Order of the Supreme Court of British Columbia should the Tenant fail to comply with the mutually agreed to terms. The Landlord did not file the Order of Possession with the Court.

The Landlord can also file a One Month's Notice to End Tenancy based on:

> Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The Landlord did not issue the Notice for non-compliance within the required time.

I have also reviewed the terms of the Settlement Agreements. I find it significant that when the September 13, 2017, Settlement Agreement was approved by the parties the only outstanding issues carried forward from April 29, 2016 were:

- the repair and replacement of skirting, and
- replacement of the aluminum window frames.

The Landlord did not negotiate inclusion of "repair and create porch and emergency access railings" suggesting that this matter was no longer an issue.

The Tenant stated he built porches, steps and installed railings for the two primary access/egress points and provided photos. He argues that he did not know that the porch, steps, and emergency access railings were intended for the outside the sliding glass doors that have never been used for access/egress. The terms of the April 29, 2016, Settlement Agreement are silent about the location for the porch/emergency access railings.

The Tenant testified he relied on the April 29, 2016 Settlement Agreement, replacing the windows on the north and east side of the manufactured home by the end of 2017. I note that while the 2016 Settlement Agreement is specific - identifying the north and east side windows- the 2017 Settlement Agreement provides a broad statement that may or may not conflict with the 2016 terms. The Tenant reasonably relied on the specific terms of the 2016 Settlement Agreement and replaced the north and east windows.

Taking into careful consideration the oral testimony and the documentary evidence presented and applying the law to the facts, I find on a balance of probability that the Landlord has not met the onus of proving his application for orders under section 48 of the Act.

I find the One Month Notice does not comply with the statutory requirements to end tenancy. The Landlord's application for an order of possession is dismissed. The One Month Notice is cancelled and is of no force and effect.

Conclusion

The Landlord's application for an Order of Possession is denied. The One Month Notice to End Tenancy for Cause is cancelled and is of no force or effect. This Tenancy will continue until 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 *Residential Tenancy Act*.

Dated: December 6, 2022

Residential Tenancy Branch