



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Section 40 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 65 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's One Month Notice served by registered mail in November 2022, the Tenant confirmed receipt on December 5, 2022, sufficiently served on December 5, 2022;
- the Tenant's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on December 9, 2022, Canada Post Tracking Number on cover sheet of decision, the Landlord confirmed receipt, deemed served on December 14, 2022; and,

- the Landlord's evidence package served by registered mail on March 29, 2023, Canada Post Tracking Number on cover sheet of decision, the Tenant confirmed receipt on April 4, 2023, sufficiently served on April 4, 2023.

Pursuant to Sections 64(2)(b), 82(1)(c), and 83(a) of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant confirmed that this periodic tenancy began on April 1, 2008. The current Landlord purchased the park in 2016. The Landlord testified that the monthly rent is \$275.00 payable on the first day of each month. The Tenant testified that the monthly rent is \$273.67.

The One Month Notice dated November 22, 2022 stated the reason the Landlord was ending the tenancy was because the Tenant has not done required repairs of damage to the site or park. The effective date of the One Month Notice was November 31, 2022.

The Landlord provided further details of the causes to end this tenancy as:

[Tenant] has not cleaned up the look of her property siding is unfinished skirting is rotting garag door is a tarp this has been address 2 year ago plus and nothing has been finished and what had been done is not professional.

The Landlord testified that the repairs to the Tenant's manufactured home have been outstanding since 2021. To this date the repairs have not been completed, and he does not think she is doing a good job. The Landlord stated the Tenant has not done damage to the manufactured home site.

The Landlord testified that the Tenant is not following the rules in the park. He pointed to the section in the park rules dealing with Additions which states:

ALL additions, porches, carports, and decks require:

- 1. Approval of the Landlord/Manager/Owner.*
- 2. A [region] Building Permit*
- 3. Upon approval by the Landlord/Manager/Owner the same must be completed within 30 days. All siding to be vinyl and color-keyed to the mobile home.*

The Landlord stated that he has asked for the building and electrical permits for the Tenant's manufactured home, but they have not been forthcoming. He said he called the municipality, but they have no record of them.

The Landlord agreed to a deadline of August 15, 2023 for all the repairs to the Tenant's manufactured home to be completed.

The Tenant stated when she received the Landlord's notification that he wanted her siding repaired, she agreed as she wants to be in compliance with the park rules. She said she provided a plan to the Landlord in a May 12, 2021 email specifying the agreed upon repairs for the siding, window trim, skirting and a garage door.

The Tenant testified about the following items:

Permits:

Addition – purchased in 2008, Tenant was told the mobile home was grandfathered in as long as it's maintained. Building permits were not required prior to May 1980 - She has not added any additions since her move-in. She said she can only guess that the addition was built prior to 1980.

Electrical – The Tenant stated that the Landlord is assuming she has a secondary electrical force coming into her mobile home. She contacted BC Hydro, and the Tenant was told that they have nothing showing that she has a secondary electrical input. BC Hydro told her that it is up to the park owner to sort out the logistics of the electrical lines coming from the service pole to the Tenant's mobile home.

Siding – The Tenant stated that the vinyl siding was completed in October 2022.

Window trim – The Tenant says there is 15% left to do.

Skirting - Completed

Garage door – The Tenant has purchased a same colour gazebo popup nylon tent style, which is secured with hooks at night and when she is away. She plans on installing a cedar shed door that swings outwards.

The Tenant says there is no problem for her to complete the repairs by August 15, 2023.

The Landlord responded and clarified on the following:

Electrical – The Landlord stated he needs access to the electrical box which supplies four other mobiles. This electrical box is situated on the Tenant's site.

Siding – The Landlord agrees that the vinyl siding on the Tenant's mobile is completed.

Garage door – The Landlord stated the Tenant could look into a roll-up garage door that fits on the inside of the header. He does not know the names of companies that make these.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The Landlord applied under Section 40 of the Act to end the Tenant's tenancy because he stated the Tenant does not repair damage to the manufactured home site, as required under Section 26(3) of the Act within a reasonable time.

Section 26(3) reads below:

Landlord and tenant obligations to repair and maintain

26 (1) *A landlord must*

- (a) *provide and maintain the manufactured home park in a reasonable state of repair, and*
- (b) *comply with housing, health and safety standards required by law.*

...

- (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. (emphasis mine)

The Tenant was sufficiently served with the One Month Notice on December 5, 2022. The parties noted an incorrect effective date on the notice. Pursuant to Section 46 of the Act, an incorrect effective date can be automatically changed and is deemed to be the earliest date that complies with the section. I find the correct effective date is January 31, 2023. After the correction, I find that the One Month Notice complied with the form and content requirements of Section 45 of the Act. The Tenant applied for dispute resolution on December 5, 2022 which was within 10 days after receiving the One Month Notice.

The Landlord testified that he needs access to a locked electrical box periodically which is situated on the Tenant's manufactured home site as this electrical box serves four other manufactured homes in the park. Section 26(1) of the Act specifies that a landlord must provide and maintain the manufactured home park in a reasonable state of repair, and comply with housing, health and safety standards required by law.

Relations between the Tenant and the Landlord in this matter are tense. The Tenant has blocked the Landlord's emails coming into her email inbox. However, the Landlord does have a maintenance person who works in the park who can provide the written notice on the Tenant's door when the Landlord needs access. Pursuant to Section 23(b) of the Act, the landlord must provide at least 24 hours and not more than 30 days before entry to the manufactured home site. The Landlord lives far away from the park, but with prudent planning, ample notice can be established through his maintenance person.

The Landlord is not happy with the repairs that the Tenant is doing on her manufactured home, but he conceded that some of the work has been completed, albeit not on his timeclock. The details of the cause to end tenancy does not speak to the fact that the Landlord wants the Tenant to follow the park rules. The Landlord's evidence was that he wants the Tenant to follow park rules; however, Section 40(f) of the Act deals with repairs to damage to the manufactured home site, and not the manufactured home (emphasis mine). The Landlord stated the Tenant has not done damage to the manufactured home site. I find that the Landlord has not proven on a balance of probabilities cause to end this tenancy. So, I cancel the Landlord's One Month Notice and the tenancy will continue until ended in accordance with the Act.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 65(2) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

Conclusion

The Tenant's application to cancel the Landlord's One Month Notice is granted.

The Tenant may withhold \$100.00 from next month's rent to recover her application filing fee.

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: May 15, 2023

Residential Tenancy Branch