



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, AS, FFT
 OPC, FFL

Introduction

This hearing dealt with adjourned cross Applications for Dispute Resolution filed by the parties under the *Manufactured Home Park Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s application for Dispute Resolution was made on May 2, 2023. The Tenant applied to cancel a One-Month Notice to End Tenancy for Cause dated April 30, 2023, for an order that would allow them to assign or sublet the rental unit, and to recover the filing fee for their application.

The Landlord’s Application for Dispute Resolution was made on July 3, 2023. The Landlord applied to enforce a One-Month Notice to End Tenancy for Cause dated April 30, 2023, and utilities and to recover the filing fee paid for their application.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters - Related Issues

I have reviewed the Tenant's application, and I note that they have applied to cancel a Notice to end tenancy as well as one other issue. I find that this other issue is not related to the Tenant's request to cancel the Notice. As this matter does not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply the Tenant's request for permission to assign or sublet the rental unit.

I will proceed with this hearing on the Tenant's claim to cancel the Notice and the Landlord's application.

Preliminary Matter – Application Amendments

At the outset of these proceedings, the parties agreed that a second One-Month Notice to End Tenancy for Cause dated June 30, 2023, had been issued by the Landlord to the Tenant.

Both parties agreed that they had been under the impression that this second notice to end tenancy would be addressed during today's proceedings. Both parties requested that their applications be amended to include this second Notice and confirmed that they were both ready to proceed in today's hearing on both the One-Month Notice to End Tenancy for Cause dated April 30, 2023, and the One-Month Notice to End Tenancy for Cause dated June 30, 2023.

Section 4.2 of the Residential Tenancy Branches Rules of Procedure states the following:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As both the Landlord and the Tenant were expecting that the One-Month Notice to End Tenancy for Cause dated April 30, 2023, and the One-Month Notice to End Tenancy for Cause dated June 30, 2023, would be addressed during these proceedings, I find it appropriate to amend the applications during these proceedings to include the Tenant's request to dispute and the Landlord's request to enforce the Notice dated June 30, 2023.

Issues to be Decided

- Should the Notice to End Tenancy dated April 30, 2023, be cancelled?
- Should the Notice to End Tenancy dated June 30, 2023, be cancelled?
- If not, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee for this application?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on December 15, 2022, as a one-year fixed-term tenancy that will roll into a month-to-month at the end of the initial fixed term. Rent is set in the amount of \$725.00 and is to be paid by the first day of each month. The Landlord submitted a copy of the Tenancy agreement and attached addendum into documentary evidence.

The parties agreed that two One-Month Notices to end tenancy were issued to the Tenant, the first Notice to end tenancy was served to the Tenant on April 30, 2023, by personal service. The Landlord and the Tenant submitted a copy of this Notice into documentary evidence. The reason for the Notice was checked off as follows:

- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.*
- Tenant has assigned or sublet the rental unit/site/property/park without the Landlord's written consent.

The second Notice to end tenancy was served to the Tenant on June 30, 2023, by personal service. The Landlord submitted a copy of this Notice into documentary evidence. The reason for the Notice was checked off as follows:

- *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.*
- Tenant has assigned or sublet the rental unit/site/property/park without the Landlord's written consent.

The Landlord testified that the Tenant had moved their partner into the home without their consent, which was a breach of the material term of the tenancy agreement. The Landlord referenced section five of the Tenancy agreement in support of this part of their claim. The Landlord submitted that the tenancy agreement clearly stated that the Tenant could not have guest stay with them for more than 30 days in any calendar year.

Additionally, the Landlord submitted that adding this second person was a breach of the Act, as this second person is a subtenant, and the Tenant did not get permission from the Landlord to have a subtenant. The Landlord referenced section 13 of the Tenancy agreement in support of this part of their claim. The Landlord also submitted that they served the Tenant with a warning letter on April 14, 2023, giving the Tenant until April 30, 2023, to remove the unauthorized occupant from the home. The Landlord submitted a copy of the April 14, 2023, letter into documentary evidence.

The Landlord agreed that they issued the Notice to end this tenancy on the last date of the warning period provided in the written warning letter, dated April 14, 2023.

The Tenant testified that their partner and their son regularly visit them but that neither of them are living at the home. The Tenant testified that they are the only one living in the home have not moved anyone else in.

The Landlord testified that the Tenant has not made repairs or the rental property as contracted to in their tenancy agreement. The Landlord referenced section of five of the attached tenancy agreement addendum in support of this part of their claim. The Landlord submitted that they served the Tenant with a warning letter on June 5, 2023, giving the Tenant until June 30, 2023, to remove the unauthorized occupant of the home and to make the required repairs. The Landlord submitted a copy of the June 5, 2023, letter into documentary evidence.

The Landlord agreed that they issued the Notice to end this tenancy on the last date of the warning period provided in the written warning letter, dated June 5, 2023.

The Tenant agreed that when these notices were issued the list of repairs in the tenancy agreement had not been completed.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find as follows:

The Landlord has included three reasons for ending the tenancy on their Notices, I will address each one individually.

1. Tenant has assigned or sublet the rental unit/site/property/park without the Landlord's written consent.

The landlord has claimed that the Tenant has assigned or sublet the rental unit/site/property/park without the Landlord's written consent. The Residential Tenancy Branches policy guide #19 Assignment and Sublet states the following:

"B. ASSIGNMENT

Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

.....

C. SUBLETTING

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-

tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant.

This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant.

As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

....The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. 'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet.'

I accept the testimony of these parties that the Tenant named on the tenancy agreement that I have before me in these proceedings, continues to reside in the rental unit and that they have not transferred their rights as a Tenant to a third party. As the Tenant to the original tenancy still resides in the rental unit, I find that this tenancy has not been assigned or sublet, and I dismiss this portion of the Landlord's Notices as it is not a valid reason for ending this tenancy.

2. *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so*

The Landlord has indicated on their Notice that they are ending the tenancy due to a breach of a material term of the tenancy by the Tenant. Residential Tenancy Branch Policy Guide #8 Unconscionable and Material Terms states the following regarding material terms:

“Material Terms

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, the Landlord has claimed that the Tenant has moved a second person into the home, to live at the park, which is a breach of their tenancy agreement that restricted occupancy to just one person. However, the Tenant testified that they had not moved a second person into the home.

I find that the parties, in this case, have offered conflicting verbal testimony regarding the number of people living in the home. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, as it is the Landlord holds the burden of proof, regarding the notices they issued.

I have reviewed the documentary evidence submitted to these proceedings by the Landlord, and I find that there is no evidence before me to support their claim that there is a second person residing in the home. In the absence of sufficient evidence to support their claim, I find that I must dismiss this reason for ending the tenancy.

The Landlord was cautioned during these proceedings, regarding attempts to restrict a tenant's guests. Sections 24 and 5 of the Act were reviewed with the Landlord and the Tenant during these proceedings and are noted below reference.

Tenant's right of access protected

24 (1) A landlord must not unreasonably restrict access to a manufactured home park by

(a) the tenant of a manufactured home site that is part of the manufactured home park, or

(b) a person permitted in the manufactured home park by that tenant.

and...

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Based on the submission of these parties, I find that the Landlord breached sections 24 and 5 of the Act when they included a term in this tenancy agreement set restriction on the guests of the Tenant.

3. The Tenant has not done required repairs of damage to the unit/site/property/park.

The final reason indicated by the Landlord on their Notice is that they are ending the tenancy due to the Tenant not completing the required repairs for damage. The Landlord submitted that when the tenancy agreement was signed a list of repairs was included in that document which required the Tenant to complete repairs to the pad site, and that even after being issued a warning letter, these repairs remained unfinished.

Section 26 of the Act states the following regarding repairs:

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.

(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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

Pursuant to section 26 (3&4) of the Act, I find that a tenant can only be compelled to make repairs for damage they have caused by the actions or neglect.

After reviewing this tenancy agreement and the attached addendum, I find that the repairs to this rental pad listed in this contract were required before the Tenant took possession of the rental pad and were mostly caused by either normal wear and tear or the previous renter of this pad. I find that this tenancy cannot be ended due to the Tenant not completing a listed repairs for damage they did not cause, and I dismiss this reason for ending this tenancy in its entirety.

Additionally, I find that the Landlord breached sections 26 and 5 of the Act when they included a term in this tenancy agreement that transferred their legal obligation to make repairs to the pad site to the Tenant.

The Landlord was reminded in these proceedings, of their requirement to repair and maintain the rental pad and the restriction under section 5 of the Act, that prevents them from any attempt to contract out of their requirements to maintain the park, including the individual rental pads.

Finally, I must also mention the warning letters the Landlord served to the Tenant. I noted that both of these letters indicated a deadline to complete an action or a notice to end tenancy would be issued. However, after reviewing these warning letters and the Notices issued by the Landlord, I find that the Landlord issued these Notices to end tenancy before their warning period had expired. This is a moot point, as I have already found the reasons for the Landlord's Notice to be insufficient to end this tenancy; however, I must point out that the Landlord was required to wait until their warning period had expired before they issued the Notice to end the tenancy. This would have also been sufficient grounds to cancel the Notices before me in these proceedings, had they not already been found to be unenforceable.

For the reasons stated above, I find that the Landlord has not proven cause sufficient to terminate the tenancy for any of reasons given on the Notices they issued. Therefore, I grant the Tenant's application to cancel the Notice dated April 30, 2023, and the Notice dated June 30, 2023, and I find these Notices are of no force or effect. This tenancy will continue until legally ended in accordance with the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in their application to dispute the Notices, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for their application. The Tenant is granted permission to take a one-time deduction of \$100.00 from their next month's rent in full satisfaction of this awarded amount.

Conclusion

I find that the Landlord breached sections 5, 24 and 26 of the Act.

The Tenant's application to cancel the Notice dated April 30, 2023, is granted. The tenancy will continue until legally ended in accordance with the *Act*.

The Tenant's application to cancel the Notice dated June 30, 2023, is granted. The tenancy will continue until legally ended in accordance with the *Act*.

I grant the Tenant permission to take a one-time deduction of \$100.00 from their next month's rent, in full satisfaction of the amount awarded in this decision.

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: August 25, 2023

Residential Tenancy Branch