

DECISION

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* (the "Act") for:

- Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 40 of the Act
- Authorization to recover the filing fee for this application from the Landlord under section 65 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord was served on September 25, 2023, by registered mail in accordance with section 89(1) of the Act and deemed received the fifth day after the registered mailing. Tenant JC provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

Service of Evidence

Based on the submissions before me, I find that the Tenants' evidence was served to the Landlord in accordance with section 88 of the Act.

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Issues to be Decided

Should the Landlord's One Month Notice 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 from the Landlord?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

I will note that this hearing deals with two units at the same mobile home park, unit #18 and Unit #25. Tenant JC is listed as a tenant for unit #18 and Tenant JC and Tenant NL are listed as tenants for unit #25. This Hearing was combined to deal with the issues with both unit #18 and unit #25.

Tenant JC was served with a One Month Notice for Cause on September 14, 2023 in relation to their tenancy at unit #18 and it listed a breach of a material term (One Month Notice #1). Tenant JC was also served with a One Month Notice for Cause on September 14, 2023, in relation to their tenancy at unit #25 and it listed a breach of a material term (One Month Notice #2). Tenant JC has disputed One Month Notice #1 and One Month Notice #2.

One Month Notice #1

The Landlord's agent TG (the Landlord's Agent) argued Tenant JC falsified information on the application for the occupants of unit #25. The Landlord's Agent advised there is no material term of the tenancy agreement that prohibits falsifying information but argued that what was breached is a trailer park rule that prohibits a trailer from being rented. The position of the Landlord's Agent is that Tenant JC of unit #18 falsified information which resulted in the occupants of the unit #25 renting it, which is not allowed under the park rules.

The Tenant's advocate FS (the Tenant's Advocate) argued there is no material term of the tenancy agreement that prohibits falsifying information, and the Tenant also disputes they falsified any information. Additionally, the Tenant's Advocate argued the application process of unit #25 has no barring on Tenant JC's tenancy in unit #18.

One Month Notice #2

The Landlord's Agent argued Tenant JC and Tenant NL are renting unit #25 to occupants SB and OB, which is not allowed under the park rules. The Landlord's Agent advised park rules prohibit renting and that a tenant must be the owner of the mobile home. The Landlord's Agent argued SB and OB were not approved to live at unit #25 as they are not owners of the mobile home. The Landlord submitted warning letters from August 7, 18 and 24, 2023, in support of this application. The Landlord's Agent also

argued Tenant JC was not an owner of the mobile home for unit #25. The Tenant's Agent submitted documentation showing that Tenant JC and NL are joint owners of the mobile home.

The Tenant's Agent argued occupants OB and SB have been assigned unit #25 as they both completed the RTB Form 10. The Tenant's Agent argued the principle of estoppel applies to occupant SB since they were living in the unit from January to August 2023 without issue and the Landlord was accepting their pad rent every month without issue. The Landlord's Agent pointed to a section of RTB Form 10 which states "if your home owner does not have your response by the end of the 10th day, your consent to the assignment will be conclusively deemed to have been given". The parties confirmed occupant OB submitted their application. The Landlord's Agent argued the assignment is deemed as no response or denial was ever sent by the Landlord.

The Landlord's Agent argued that assignments are not allowed under the park rules as owners are required to live in the mobile home. The Tenant's Advocate argued this interpretation is unconscionable and contradicts the MPHTA which allows assignments and only allows denial under select grounds in the Regulation.

Finally, the Tenant's Agent argued that under the MHPTA Regulation, a park rule is only enforceable if it is clear enough that a reasonable tenant can understand how to comply with the rule. The position of the Tenant's Agent is that the park rules preventing renting are not clear and are not enforceable.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 40 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 40 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

As Tenant JC disputed these notices on September 21, 2023, and since I have found that One Month Notice #1 and One Month Notice #2 were served to Tenant JC on

September 14, 2023, I find that Tenant JC has applied to dispute the One Month Notices within the time frame allowed by the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue One Month Notice #1 and One Month Notice #2.

One Month Notice #1

Under the details of case for One Month Notice #1 the Landlord listed Tenant JC falsified information and the Landlord selected that this breached a material term of the tenancy agreement. I find that there is no material term in the tenancy agreement that prohibits falsifying information. Additionally, the alleged cause on One Month Notice #1 was in relation to the tenancy with unit #25, yet the Landlord is attempting to end the tenancy in relation to unit #18. I find that this alleged cause has no bearing on the tenancy with unit #18, even though the person they are alleging falsified information rents the pad for unit #18. For the above reasons, I find that the Landlord has provided insufficient evidence to establish they have grounds for issuing One Month Notice #1.

One Month Notice #2

Section 28(1) of the Act allows a tenant to assign or sublet with the prior consent of the landlord. The interpretation of the park rules that prohibits subletting and assigning because an owner of the mobile home must live there, is contradictory to the Act. In accordance with section 4 of the Act which sets out that any attempt to avoid or contract out of this Act or regulations is of no effect, I find that the rule is not enforceable to prohibit assignment or subletting. As such, I find that Tenant JC has not breached a material term of the tenancy agreement.

Additionally, I find that the Landlord consented to the assignment of unit #25. The Landlord has not provided any evidence to show they sent OB a denial to their RTB From 10 request to consent to assign. Estoppel is a legal principle which bars a person from asserting a legal right due to that person's actions, conduct, statements, admissions or failure to act. I find that the Landlord allowed Occupant SB to live in unit #25 without issue and accepted pad rent from January to August 2023. As such, I find that the principle of estoppel applies and consent to assignment was given through the Landlord's failure to act. While the Landlord's Agent argued Tenant JC is not an owner of the mobile home for unit #25, the Tenant has provided evidence to support that Tenant JC and NL were joint owners. As such, Tenant JC is authorized to assign unit #25.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has failed to prove that they have sufficient cause to issue One Month Notice #1 to Tenant JC and One Month Notice #2 to the Tenants and obtain an end to these tenancies.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As Tenant JC was successful in both their applications, I find that Tenant JC is entitled to recover the \$200.00 filing fee paid for these applications under section 72 of the Act. I authorize Tenant JC to deduct \$200.00 from one future pad payment to recover the filing fee.

Conclusion

The Tenant's application is granted for cancellation of One Month Notice #1 and One Month Notice #2 under section 47 of the Act.

One Month Notice #1 and One Month Notice #2 signed September 14, 2023 are cancelled and are of no force or effect. Both tenancies continue until they are 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 Act.

Dated: January 18, 2024

Residential Tenancy Branch