



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a One Month Notice to End Tenancy For Cause and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. The landlord confirmed exchange of all evidence, which was not disputed by the tenant. Therefore, all evidence has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy For Cause dated October 24, 2023 was issued in accordance with the *Manufactured Home Park Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy probably began more than 20 years ago, and the tenant still resides in the manufactured home belonging to the tenant in the manufactured home park. There is a written tenancy agreement, but a copy has not been provided for this hearing. Rent in the amount of about \$750.00 per month is payable on the 1st day of each month and there are no rental arrears.

The landlord has provided a copy of a One Month Notice to End Tenancy For Cause dated October 24, 2023 and containing an effective date of vacancy of November 20,

2023. The landlord's agent does not know how or when it was served to the tenant. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- 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;
- 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's agent testified that the parties had attended a hearing due to a previous Notice to end the tenancy given to the tenant in August, 2023 following concerns the landlord had of health and safety of the tenant's manufactured home, in terms of there being a potential fire hazard and not being maintained.

Starting on January 24, 2023 formal notice had initially been given to the tenant about required maintenance, and a copy has been provided for this hearing. The tenant interpreted that as a Notice to end the tenancy and filed an application, but the landlord was not evicting. Later, nothing had been done so the landlord gave a Notice to end the tenancy. An Arbitrator decided that the tenant would arrange for an inspection of the home within 30 days. A copy of the resulting Decision dated September 19, 2023 has been provided for this hearing, which states that the parties had settled the dispute. The landlord could not tell if the home required upgrades.

On October 17, 2023 the tenant notified the landlord that a qualified home inspector was located, but needed to postpone the date for the inspection or for contracting the inspector due to an urgent home insurance claim made on October 16, 2023. The tenant advised that she would let the landlord know by email when the inspection could take place. No further details were provided and the tenant said she wasn't staying in the manufactured home. A copy of the email has been provided for this hearing.

The landlord responded with an email dated October 22, 2023, a copy of which has also been provided for this hearing. The email to the tenant stated that it needed to be arranged and suggested a new date, but the tenant still hasn't arranged the inspection. Instead of arranging the inspector, the tenant sent an email to the landlord accusing the landlord of trying to get rid of her for other purposes, such as a new lot at the side lane.

With respect to the second reason for issuing the Notice, the landlord's agent testified that there is wear and tear of the home over the years, and the landlord had hoped to determine by a home inspection, which has not been done.

The material term of the tenancy agreement that the landlord alleges has been breached, is to maintain the home. The landlord originally sent a letter to the tenant requesting that she maintain the property in January, 2023 and no action has been taken. A copy has been provided for this hearing, as well as numerous photographs.

The tenant is not complying with the order of the Arbitrator to get the inspection completed, and has not satisfied that term to ensure that the tenant's home meets the health and safety standards. The landlord gave the tenant extra time to arrange it, but the tenant didn't respond indicating who the inspector is or when it could be done; the tenant simply ignored the landlord. The landlord's agent was concerned about the insurance claim in the first place.

The tenant testified that the landlord has gone to extremes. By October 13, 2023 the tenant had found someone to inspect and was waiting for a call, but the tenant's gardener found a leak. The tenant had to wait until the following Monday to get a plumber. The tenant called the insurance company and advised the landlord. It took 5 weeks for the insurance company to deal with it.

The tenant was away for 10 days waiting for the plumber to install a new toilet and flooring, however the plumber found a leakage that had to be addressed under the manufactured home, and had to put new plumbing through there. Siding had been taken down, then the restoration company returned on November 23, 2023, but by then the tenant already had the Notice to end the tenancy.

It makes no sense for the tenant to have set up the inspection if the landlord wants the tenant to leave. The goal changed from inspection to dealing with the Notice to end the tenancy. The tenant didn't bother to tell the landlord who the inspector was to prevent the landlord from calling them to tell them what to look at. The tenant is more than willing to set up the inspection.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Manufactured Home Park Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the

One Month Notice to End Tenancy For Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

The only evidence that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord or put the landlord's property at significant risk is a letter from the landlord to the tenant dated January 24, 2023 which alleges that the tenant has not maintained the yard and the tenant's manufactured home. The photographs do not depict enough evidence to justify ending the tenancy for this reason.

The landlord has not indicated what "required repair of damage" the tenant was required to do, other than the letter of January 24, 2023. During the hearing, I advised the parties that I would review the previous Decision to ensure that I make no findings or rulings on a matter that has already been adjudicated upon. The Decision of September 19, 2023 was also clarified by the Arbitrator on September 22, 2023, which makes clear that no orders for repairs were made because the inspection report had not yet been done. Therefore, I cannot find that the landlord has established that reason for ending the tenancy.

To end a tenancy agreement for breach of a material term the party alleging a breach 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.

In this case, the landlord sent an email to the tenant on October 22, 2023 indicating that the 30-day window for the inspection concluded on October 19, 2023, but the landlord didn't receive confirmation of a scheduled inspection. It also requests, by the end of the day on October 23, 2023, the name of the inspector, instructions provided to the inspector regarding the scope of the inspection, a quote provided by the inspector and details of the tenant's insurance claim. However, that is not what was ordered by the Arbitrator. The Decision on Request For Clarification states that the landlord is not the primary party to qualify the interpretation of that report. The email also states that if the tenant provides the details by then, the landlord can engage the inspector on October 24, but if not received by that time, the landlord "... will need to reactivate the eviction

order and refer the matter back to the arbitrator.” No one has provided a copy of the tenancy agreement, and therefore, I cannot be satisfied that the tenant has breached a material term.

With respect to the final reason for ending the tenancy, non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order, the order was to arrange for an inspector within 30 days of September 19, 2023.

I have also reviewed the previous Decision made on September 19, 2023. The tenant had applied for an order cancelling a One Month Notice to End Tenancy For Cause; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord. The parties agreed to settle the dispute in the following terms:

- The tenant is entitled to keep the shed and greenhouse on the site;
- The tenant will arrange and have a qualified home inspector to inspect the home (not the shed or greenhouse) for the purpose of determining the structural integrity of the home and to ensure there is no fire hazard;
- The landlord will pay for the cost of the inspection report; and
- Both parties are entitled to a copy of the report.

The Decision also states: “As we did not determine a timeframe for the tenant to arrange the home inspection, I find a reasonable amount of time is within 30 days. This is simply to arrange the inspection date as the date it is scheduled is not necessarily within the tenant’s control.”

The parties had agreed to the terms, but not the 30 day deadline, which was found by the Arbitrator to be reasonable. The tenant indicated in the email of October 17, 2023 that an inspector had been arranged, but needed to postpone the date for contracting them due to an urgent insurance claim submitted by the tenant the day before. It also states that the tenant will advise the landlord when the tenant will be able to proceed with the home inspection.

It is not for me to decide whether or not the tenant should be granted more time to accomplish the order of September 19, 2023, but is up to me to determine whether or not the landlord has established cause to end the tenancy at the time the One Month Notice to End Tenancy For Cause was issued.

I see no reason for the tenant to not contact the landlord or arrange the inspection. I accept that the tenant had a restoration company arrive due to leaks located by the

tenant's gardener and then the plumber, however I find that the tenant could have arranged the inspection in any event in order to comply with the order of September 19, 2023.

In the circumstances, and considering the evidence and testimony of the parties, I find that the landlord had cause to issue the Notice to end the tenancy, and I dismiss the tenant's application for an order cancelling it.

The law states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long as the Notice given is in the approved form. Having found that it is in the approved form, I grant an order of possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: January 30, 2024

Residential Tenancy Branch