Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding Crystal River Court Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, CNC-MT, MNDCT, RP, AS, FFT, OPC, FFL

Introduction

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Tenant on April 17, 2024, and an Application filed by the Landlord on May 2, 2024.

The Tenant applied:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 39 and 59 of the Act
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) and an extension of the time limit to dispute the One Month Notice under sections 40 and 59 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 60 of the Act
- an order for the Landlord to make repairs to the manufactured home park or site under sections 26 and 55 of the Act
- an order allowing the Tenant to assign or sublet because the Landlord's permission has been unreasonably withheld under sections 28 and 58 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 65 of the Act

The Landlord applied:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 40 and 48 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 65 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Landlord C.R.C.L. was not served in accordance with section 89(1) of the Act. Landlord counsel M.D. however, indicated that the Landlord did receive a courtesy copy from the *Residential Tenancy Branch* and therefore was prepared to proceed with the hearing despite the Tenant's lack of service.

I find that the Tenant was served on May 3, 2024, by registered mail in accordance with section 89(1) of the Act. A copy of the tracking number was submitted by the Landlord as evidence.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act but not in accordance with the *Residential Tenancy Branch Rules of Procedure section* ***3.3 Evidence for Cross-Application for Dispute Resolution Evidence*** which states that evidence supporting a cross-application must:

- be submitted at the same time as the application is submitted, or within three days of submitting an Online Application for Dispute Resolution;
- be served on the other party at the same time as the Notice of Dispute Resolution Proceeding Package for the cross-application is served; and
- **be received by the other party** and the Residential Tenancy Branch directly or through a Service BC Office **not less than 14 days before the hearing**.

Landlord counsel M.D. however, indicated that the Landlord did not object to consideration of the Tenant's evidence despite the Tenant's lack of service.

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

Preliminary Matters – Severing, One Month Notice Grounds & Ten Day Notice

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. At the commencement of the hearing, I determined that the issue of whether to uphold or cancel the Landlord's notice to end tenancy was the primary issue before me and that

the other issues listed on the Tenant's application were not related and would be dismissed with or without leave to reapply.

At the outset of the hearing, Landlord counsel M.D. advised that the Landlord was no longer seeking to end the tenancy based on the ground that the Tenant had "significantly interfered with or unreasonably disturbed another occupant or the landlord".

Both parties confirmed that a 10 Day Notice had not been served.

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?

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

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.

Evidence was provided showing that this tenancy began on November 1, 2022, with a monthly site rent of $725.00, due on first day of the month.

According to Landlord counsel M.D., a One Month Notice was served to the Tenant by registered mail on April 12, 2024, because the Tenant had:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- 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 details on the notice describing the reason for the notice are as follows:

"The Tenant has violated the Tenancy Agreement by moving an unauthorized occupant onto the site without the necessary approval of the Landlord and has failed to complete repairs to the site agreed to in Addendum #1 to the Tenancy Agreement."

Landlord witness D.B. testified that she works for the Landlord and is the wife of the park manager, D.B. and that she provides assistance to the park manager and is aware of the contents of the Tenant's tenancy agreement. She testified that she became

aware of a black truck outside the Tenant's home and asked the Tenant who it belonged to and that the Tenant had indicated that it belonged to her brother who was there taking care of her cats. She testified that a discussion took place with the Tenant regarding her brother's occupancy at her residence near the end of November 2023 and the Tenant had indicated that she would submit an application for her brother for three months occupancy. She stated that although the Tenant's brother's application was submitted and rejected, he still resides in the Tenant's residence in breach of the terms of the tenancy agreement.

According to Landlord representative J.N., he reviewed and rejected the application made by the Tenant's brother, R.A., on December 23, 2023 because he had driven to the address on the application and had run into the R.A.'s ex-wife who had informed him that the R.A. had not lived in the address for quite some time and therefore he believed R.A.'s occupation would not be temporary as he had already been staying with the Tenant since September 2023. He further testified that the manufactured home park has had issues with previous occupants in the past because the occupants had "no skin in the game or ownership" which lead to confrontations with neighbors and park management. A copy of the Tenant's application was submitted as evidence by the Landlord.

Landlord representative J.N. testified that by continuing to allow her brother R.A. to occupy the Tenant's residence following the Landlord's decision to not approve his occupancy, the Tenant was in breach of clause 5 of the tenancy agreement which states:

5. Occupants and Invited Guests:

Guests: The Tenant is permitted to have guests in his home and in the common areas of the Park under reasonable circumstances, as long as the number of total occupants is not unreasonable and Park Rules are followed. **A guest is defined as someone staying in the home a total of less than 30 days in a calendar year.** **Permanent Occupants:** A person not listed in this Section, who resides on the site for more than a total of 30 days in a calendar year without prior written consent of the Landlord shall be considered to be occupying the site contrary to this Agreement and considered a trespasser in the Park. The Tenant shall promptly apply in writing for approval from the Landlord for such person to become a permanent occupant, including references and other information required by the Landlord to confirm suitability of proposed occupant. Failure to apply and obtain the necessary approval of the Landlord in writing is a **breach of a material term of this Agreement.** The Landlord may give notice to the Tenant to immediately correct the breach. The Landlord has the right to end the tenancy, if the Tenant fails to correct the breach within a reasonable time after having been given written notice by the Landlord.

Landlord representative testified that the Tenant was also in breach of section 4 of tenancy agreement addendum 1 which states:

4. Tenant(s) is to undertake and complete the following works to the home and the Site by April 30, 2023:

    i. Complete the walkway to the garbage and recycle bin enclosure with poured in place concrete or concrete paving stones to a width of 30 to 36 inches in a location approved by Landlord in writing before work begins, per Rule B.7;
    ii. Re-plant flowers in the bed across front of the home, per Rule B.11, and the flower bed at the south end of the driveway to the same standard as is currently planted or Site #60. Trim all shrubs, trees and bushes on and surrounding the Site.

He stated that when the Tenant purchased the property, he discounted the price so that the Tenant could afford to do the concrete and hedge work required by the tenancy agreement. He stated that the hedges have not been maintained and are now a fire hazard. Copies of the tenancy agreement and addendums were submitted as evidence by the Landlord.

Landlord representative J.N. further testified that the Tenant applied to the Landlord for permission to build a shed, which was approved, and that the Tenant has still not completed its construction.

Landlord representative J.N. testified that written notice was sent by the Landlord to the Tenant on February 26, 2024, advising her that she was in breach of a material term of her tenancy agreement and that she was required to remove the unauthorized occupant from the site and also reminding her that she had failed to complete the repairs, walkway construction and junk removal. A second and final notice was sent to the Tenant on March 28, 2024, advising her that if she failed to remove the unauthorized occupant by April 10, 2024, the Landlord would be issuing a notice to end tenancy. Copies of the warning letters were submitted by the Landlord as evidence.

The Tenant testified that she purchased the property with all of the money she had and therefore could not afford to do the concrete and shrub removal work requested by the Landlord but has obtained a quote for it and is agreeable to having the work done now.

She testified that she is aware of the sections of the tenancy agreement being raised by the Landlord but cannot understand why her brother cannot stay with her in her property or why his application was denied. She argued that he is staying with her on a temporary basis and that she should not be prevented from allowing him into her own home while he secures new accommodations.

Analysis

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

Section 47 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 47 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 the Tenant disputed this notice on April 17, 2024, and since I have found that the One Month Notice was served to the Tenants on April 12, 2024, I find that the Tenant has applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

Residential Tenancy Policy Guideline 8 states:

“C. Unconscionable Terms

Restricting a tenant from having guests

The standard terms found in the Schedule of the regulation provide that a landlord must not stop a tenant from having guests under reasonable circumstances in their rental unit and must not impose restrictions on guests.

Unless there are compelling circumstances to justify it, **terms in a tenancy agreement that prohibit or limit the number of days in a year a tenant can have overnight guests** (e.g., “no overnight guests” or "tenants can only have overnight guests 14 times in a year") **could be considered unconscionable**.

However, a request by the landlord to limit a tenant’s guests whose behaviour may be deemed unsafe on the rental premises (e.g., violence, harassment) would likely not be considered unconscionable.

E. 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 arbitrator will consider 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 arbitrator will consider the true intention of the parties in determining whether or not the clause is material.

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 the One Month Notice to the Tenants and obtain an end to this tenancy.

I find that the occupancy limit included in the tenancy agreement constitutes an unconscionable term as it unreasonably limits the Tenant's right as a property owner by interfering with her ability to choose which persons may attend her property and for how long based solely on the arbitrary decision of the Landlord, regardless of the absence of any rationale or justification.

I further find that the Landlord has not provided sufficient evidence or testimony to support the claim that the Tenant's brother had acted in a manner that would deem him a threat to the safety of the park or the parks other residents or that the Landlord's decision to decline his application was warranted thereby adding additional support to the conclusion reached above.

As noted above, a material term is an integral part of a contract, such that if the term is breached, it's not possible for the contract to be fulfilled. I find that, while the Tenant confirmed that she has not completed the concrete or landscaping work as required in the applicable addendum, this breach does not constitute a breach of a material term as neither one affects the basic terms of the tenancy agreement as, for example, would be the case for nonpayment of rent. I further find that the Landlord's lack of enforcement of these terms over the course of the tenancy, aside from the recent issuance of a cautionary notice and their exclusion from the final notice, further supports this finding. I find that, while the Landlord may not have explicitly waived their right to enforce these terms, their lack of enforcement over a significant period of the tenancy could be reasonably interpreted by the Tenant to indicate that these issues did not constitute material terms and therefore to conclude that they were not in breach of the agreement, the Landlord's caution notices notwithstanding. I find therefore that the Landlord has failed to prove cause for ending the tenancy for breach of material terms.

I further find that, other than the shrubs which the Tenant has agreed to replace, the Landlord's reason for ending the tenancy due to the Tenant's failure to complete repairs, was based on incomplete upgrades, namely a concrete pad and a shed, rather than on damages for which the Tenant was responsible. I find therefore that the Landlord has failed to prove cause for ending the tenancy on the grounds that the Tenant failed to complete required repairs.

Therefore, the Tenant's application is granted for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act.

The One Month Notice of April 12, 2024, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

Is the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 60 of the Act?

This issue was not heard.

For the above reasons, the Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 60 of the Act is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

Is the Tenant entitled to an order for the Landlord to make repairs to the manufactured home park or site under sections 26 and 55 of the Act?

This issue was not heard.

For the above reasons, the Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under sections 26 and 55 of the Act is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

Is the Tenant entitled to an order allowing the Tenant to assign or sublet because the Landlord's permission has been unreasonably withheld under sections 28 and 58 of the Act?

This issue was not heard.

For the above reasons, the Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under sections 28 and 58 of the Act is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

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

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the $100.00 filing fee paid for this application under section 72 of the Act.

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

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenant's application is granted for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act.
The One Month Notice of April 12, 2024, is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

I grant the Tenant a Monetary Order in the amount of **$100.00**. The Tenant may withhold $100.00, one time, from one future rent payment.

The Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 60 of the Act is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

The Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under sections 26 and 55 of the Act is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

The Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under sections 28 and 58 of the Act is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

The Landlord's application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is dismissed, without leave to reapply.

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: June 24, 2024

Residential Tenancy Branch