DECISION

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution (Application) 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
- an order to suspend or set conditions on the Landlord's right to enter the manufactured home site under section 63 of the Act
- an order requiring the Landlord to comply with the Act, regulation, or tenancy agreement under section 55 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 65 of the Act

Landlord A.T. and their agent P attended the hearing for the Landlord.

Tenants E.S. and D.S. attended the hearing for the Tenants.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The parties acknowledged service of each other's Proceeding Packages and Evidence. No service concerns were raised. I therefore accepted these things as sufficiently served for the purposes of the Act and the hearing proceeded as scheduled. The documentary evidence before me was also accepted for consideration.

Preliminary Matters

In their Application the Tenants sought remedies under multiple unrelated sections of the Act. Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure (Rules) states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenants applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. As the other claims were not sufficiently related to validity or enforceability of the One Month Notice, I exercised my discretion to dismiss their remaining claims, except for recovery of the filing fee, with leave to reapply.

Issues to be Decided

Are the Tenants' entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an Order of Possession?

Are the parties entitled to recovery of their respective filing fees?

Background and Evidence

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

The parties agreed that a written tenancy agreement exists between the Tenants and the Landlord to rent a manufactured home site at a cost of $500.00 per month. They also agreed that rent is due on the first day of each month.

There was no disagreement that there is a barn at the manufactured home park (Park) and that the Tenant D.S. has or had belongings in the barn to which they were entitled to access. However, the Landlord and their Agent accused D.S. of entering a portion of the barn to which they were not entitled to access, on January 12, 2024. They stated that D.S. did so to turn off the breaker to another residents manufactured home, as there were ongoing issues between them due to a previous relationship. They pointed to still images taken from a security camera in support of this accusation.

They stated that this was a very serious transgression, as it was winter, the temperature was -11 degrees Celsius and the resident of that manufactured home was away. The Landlord argued that if they had not gone to the manufactured home, which is occupied by their daughter, to add wood to the wood stove, the pipes and home likely would have frozen, causing significant damage. They also argued at the hearing that had their daughter been home when this occurred, this could have injured or killed them if the fire in the wood stove went out, as the electric baseboard heaters would not have kicked in due to the lack of power.

As a result of the above, and what they described as a long history of harassment since June of 2020 when the relationship between the Tenant and the Landlord's daughter dissolved, the One Month Notice was served. A copy of the One Month Notice was before me which is on the Residential Tenancy Branch (Branch) form, is signed and dated September 4, 2024, contains the address for the rental unit, and lists the following grounds for ending the tenancy:

- the tenant or a person permitted on the property by the tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord;

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- put the landlord's property at significant risk.

Details about the January 12, 2024, incident and harassment were set out in the details of cause section of the One Month Notice. The Tenants acknowledged receipt off their door on September 4, 2024.

Although the Tenant acknowledged accessing the barn on or about January 12, 2024, they denied the Landlord's allegations. They stated that they accessed the barn to use the tools they have stored there, and were seen at the breaker panel because they needed to turn the breakers for the outside outlets on. They denied the Landlord's claims of harassment, calling into question the lack of evidence submitted to substantiate the harassment claims. They accused the Landlord and their family members, including the Landlord's Agent, of having a personal vendetta against them due to the dissolution of their former relationship with the Landlord's daughter, and of issuing the One Month Notice without cause as a result.

Finally, they argued that the Landlord should not now be entitled to end their tenancy with the One Month Notice because of an issue that allegedly occurred 7 months prior to service of the One Month Notice, that was clearly not urgent or concerning to the Landlord at that time, as they did not take any action in relation to it until a previous One Month Notice was initially issued in July of 2024. That One Month Notice was cancelled by the Branch because the Landlord failed to satisfy the arbitrator that it complied with section 40(3) of the Act. The file number for that dispute is listed on the cover page of this decision. As a result, this One Month Notice was served.

Although the Landlord and their Agent acknowledged the lack of corroboratory evidence to support their allegations of harassment since June of 2020, they nevertheless stated that the harassment occurred. They also acknowledged the delay in acting with regards to the January 12, 2024, incident. However, they argued that this should not invalidate the One Month Notice, as they were debating what action to take if any, as they had previously considered the Tenant to be like a member of the family.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party with the burden of proof is responsible for providing evidence over and above their testimony to prove their claims. Although this is the Tenants' Application, the Landlord bears the burden of proof on a balance of probabilities. As a result, it is the Landlord who must satisfy me that they have grounds to end the tenancy as set out on the One Month Notice.

Are the Tenants' entitled to cancellation of the One Month Notice?

Section 40(1) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if any of the grounds set out under that section apply. Section 40(4) of the Act states that a tenant may dispute a notice by making an application for dispute resolution within 10 days after the date they receive the notice.

I accept the affirmed and undisputed testimony of the Landlord and Agent that the One Month Notice was posted to the door of the manufactured home on September 4, 2024. I also accept the affirmed and undisputed testimony of the Tenants that they received it that same day. Although the Application was not filed until September 16, 2024, I nevertheless find that it was filed on time in compliance with section 40(4) of the Act, as the 10th day was a Saturday. Section 25.5(2) of the *Interpretation Act* states that if the day that is specified for doing an act in a business office falls on a day on which the office is not open during regular business hours, the day falls on the next day the office is open during regular business hours. As the Branch office is closed on Saturdays, I therefore find that the final day for having disputed the One Month Notice moved from Saturday September 14, 2024, to Monday September 16, 2024. As a result, I find that the Tenants disputed the One Month Notice on time and that conclusive presumption under section 40(5) of the Act does not apply.

The parties disagreed about whether the Tenant D.S. intentionally turned off electricity to another manufactured home/site on January 12, 2024, and whether they harassed the Landlord and their family. They also disagreed about whether the One Month Notice should be invalidated due to the amount of time that lapsed between the alleged harassment and January 12, 2024, incident, and action taken by the Landlord in relation to it, including, but not limited to, issuance of this One Month Notice.

Regardless of whether the allegations made by the Landlord against the Tenant D.S. are true, I find that the Landlord is estopped from relying on the January 12, 2024, incident and the alleged history of harassment as grounds for ending the tenancy, as they failed to take reasonable or timely action against the Tenant in relation to these alleged actions.

Estoppel is a legal principle whereby a person is precluded from asserting something contrary to what is implied by their previous actions or statements. As set out in *Guevara v Louie* the equitable principle of estoppel applies where a person with a formal right "represents that those rights will be compromised or varied." Unlike waiver, the principle of estoppel does not require a reliance on unequivocal conduct, but rather "whether the conduct, when viewed through the eyes of the party raising the doctrine, was such as would reasonably lead that person to rely upon it."

In this case, I find that the Landlord's prior conduct, being their lack of timely action in relation to the alleged ongoing harassment and January 12, 2024, incident, led the Tenant to reasonably believe that these actions, if they even occurred at all, were either not a concern for the Landlord, or not such a significant concern that their tenancy would be ended as a result. The Landlord acknowledged that they were aware of D.S.'

presence in the barn on January 12, 2024, since approximately that same date. Their statements and evidence also indicate that the alleged harassment has been ongoing since the dissolution of D.S.' relationship with the Landlord's daughter in June of 2020. If the Landlord believed these alleged things were grounds to end the tenancy under section 40(1) of the Act, they ought to have taken expedient action in relation to them. It is not fair to the Tenants for the Landlord to now argue, some 7 months – four years later, that these actions ought to constitute grounds for ending the tenancy. Further to this, I find that they had ample time and opportunity to act against the Tenants in relation to the alleged actions, should they have wished to do so, since one or both Tenants remained occupants of the manufactured home park during that period. It was not open to the Landlord to choose not to act because D.S. had been like family to them, only to many months or years later turn around and use those same actions against the Tenant.

Based on the above, I find that the Landlord was estopped from relying on these past alleged issues, which allegedly occurred between four years to six months prior to issuance of the first One Month Notice, and seven months prior to issuance of this One Month Notice, as grounds to end the tenancy under section 40 of the Act.

Based on the above, I therefore grant the Tenants' Application seeking cancellation of the One Month Notice, and order that the One Month Notice dated September 4, 2024, is cancelled and of no force or affect. I therefore also dismiss the Landlord's Application seeking its enforcement, without leave to reapply. Moving forward, the Landlord may not rely on the January 12, 2024, incident, or harassment allegedly occurring prior to September 4, 2024, as grounds to end this tenancy.

Are the parties entitled to recovery of their respective filing fees?

As the tenants were successful in their Application, I grant them recovery of their $100.00 filing fee pursuant to section 65(1) of the Act. They may withhold this amount in one lump-sum from the next months rent payable under the tenancy agreement, pursuant to section 65(2) of the Act.

As the Landlord was unsuccessful in their Application, I dismiss their claim for recovery of their $100.00 filing fee without leave to reapply.

Conclusion

I grant the Tenants' Application seeking cancellation of the One Month Notice. The One Month Notice is therefore cancelled and of no force or affect.

Pursuant to sections 65(1) and 65(2) of the Act, the Tenants may withhold $100.00 from the next months rent payable under the tenancy agreement, in recovery of their filing fee.

I dismiss the Landlord's Application, in its entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Branch under section 9.1(1) of the Act.

Dated: November 18, 2024

Residential Tenancy Branch