



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- for an Order of Possession for cause pursuant to section 48;
- authorization to recover the filing fee for this application, pursuant to section 65.

The tenants requested:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 40;
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 60 of the Act;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 55 of the Act;
- an order to the landlord to make repairs to the rental unit pursuant to section 27;
- an order to the landlord to provide services or facilities required by law pursuant to section 58.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 81 and 82 of the *Act*, I find that both the landlords and tenants duly served with the Applications and evidence.

Preliminary Issue – Tenants’ Other Claims

Residential Tenancy Branch (RTB) 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.

The dispute resolution process is intended to be a fair, efficient, and effective process where a decision can be delivered in a timely manner. As the priority claim relates to a Notice to End Tenancy and the continuance or end of this tenancy, and the time allotted was not sufficient to allow all of the tenants' claims to be heard, I exercise my discretion to dismiss the claims unrelated to the 1 Month Notice with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

Issues

Should the landlord's 1 Month Notice be cancelled?
If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This manufactured home park tenancy began on or about August 1, 2021. Monthly pad rental is currently set at \$294.67, payable on the first of the month.

The landlord served the tenants with a 1 Month Notice to End Tenancy on September 25, 2024 on the following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. 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.

3. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
4. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site/property/park
5. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Under "details", the landlord wrote the following:

Tenant failed to provide evidence to retain the house cameras as per previous arbitration

Tenant failed to clean up their yard as per the previous arbitration and under oath reported it was done. Landlord required evidence Tenant relocated items took picture as evidence, submitted the photo and relocated all of the items back to previous location. Tenant provided notice of pending hazard of trees based on report.

Landlord noted that tree maintenance equipment would be required to be relocated at a considerable expense to the landlord Tenant did not have a report and lied that a report existed.

During tree maintenance the equipment had a mechanical failure, Tenant reported damage to exterior of home, filed an incident report with ICBC which will be denied.

Tenant has wrapped 11 trees on their lot and the neighbors trees with caution tape and after notification to remove the tape but will not remove the caution tape. Landlord removed the first set of caution tape and it was replaced by the tenant.

The landlord provided the following submissions for why the 1 Month Notice was issued. The landlord testified that the tenant has been residing in the manufactured home park since 2011. Around 2020, the tenant became quite confrontational with the park manager, which interfered with the daily operations of the manufactured home park. The park manager retired in December 2022.

The landlord testified that the tenants failed to comply with the terms of the previous settlement reached on April 5, 2024:

1. *The Tenants will email a current picture of their yard to the Landlord on or before end of day April 7, 2024.*

2. *The Tenants have until May 31, 2024, to engage residents of the Park regarding the following clause from the 2023 Park Rules:*

7. The use of security cameras or surveillance systems is prohibited except for one doorbell camera. Security Cameras may only be focused on the own rental pad and must be stationary. Consent from the landlord must be received prior to the installation of any security or surveillance system.

3. *Engagement related efforts could include but will not be limited to the establishment of a Park Committee, as set out in the Act*

https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/02077_01#section32 and Regulations

https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/481_2003#section31

4. *On or before May 31, 2024, the Tenants will present the Landlord and other residents with a written summary of findings and recommendations along with relevant evidence of best practice and legal precedence regarding use and management of personal and private security cameras and surveillance systems in Manufactured Home Parks.*

The landlord testified that the tenants had only temporarily cleaned up the site, and then relocated the items back after pictures were taken. The landlord also testified that the tenants continue to use security cameras in contravention of the Park Rules. The landlord testified that the tenants continue to disturb and interfere with the landlord's management of the property, which includes the self-marking of trees with caution tape.

The landlord testified that they were extremely frustrated by the tenants' behaviour, and argued that the tenants have significantly disturbed and interfered with the landlord, and had caused the landlord significant expense.

The tenants dispute breaching the terms of the tenancy agreement and park rules. The tenants testified that they do have security cameras mounted, but that they were dummy cameras that were not functional. The tenants noted that this issue was also previously addressed in a previous hearing.

The tenants testified that there were trees on the property which posed a significant safety risk. The tenants testified that they were instructed by the landlord to mark these trees. The tenants testified that despite their requests, the landlord has refused to deal with the tenants' issues, and instead has attempted to repeatedly end this tenancy. The tenants feel targeted and harassed by the landlord, and request that the 1 Month Notice be cancelled.

Analysis

Section 40 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may dispute the 1 Month Notice by filing an application for dispute resolution within ten days of the date that the tenant receives the notice. The tenants received the 1 Month on September 25, 2024, and disputed the Notice on October 7, 2024.

As per the RTB Definitions for how Days are calculated:

- a) If the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday, the time is extended to the next day that is not a holiday.*
- b) If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.*
- c) In the calculation of time expressed as clear days, weeks, months, or years, or as "at least" or "not less than" a number of days, weeks, months, or years, the first and last days must be excluded.*
- d) In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included*

I note that October 5, 2024 is a Saturday when the government offices are closed, and the first business day following that is October 7, 2024. The tenants therefore had until October 7, 2024 to file their application, and I therefore find that they had filed their application within the required time. The onus, therefore, shifts to the landlord to justify the end of this tenancy on the grounds provided on the 1 Month Notice.

The landlord alleges that the tenants failed to comply with the previous orders and agreements made at the last hearing held on April 25, 2024. I note that the landlord did not select the following reason on the 1 Month Notice: "Non-compliance with an

order under the legislation within 30 days after the tenant received the order or the date in the order.” As the landlord did not serve the tenants with a 1 Month Notice on these grounds, the landlord may not end the tenancy for this reason.

The landlord also alleges that the tenants breached a material term of the tenancy agreement.

As noted in RTB Policy Guideline #8, 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. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

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...*

Based on the evidence and testimony before me, I do not find that the landlord has established that the tenants have breached a material term of the tenancy agreement, after being provided with written notice to correct the breach by a reasonable deadline. Not only am I not satisfied that the landlord had established what material term of the tenancy agreement the tenants had breached, I am not satisfied that any of the behaviour referenced in this dispute constitutes a material breach.

The landlord alleges that the tenants had failed to comply with the Rules by installing security cameras. The tenants argued that these cameras are not functional, and are “dummy cameras”. I note that this issue was already heard and addressed in a previous

hearing held on January 29, 2024, and the Arbitrator had cancelled the 1 Month Notice as they were not satisfied that the installation of the security cameras constituted a breach of a material term.

The landlord also alleged that the tenants failed to address the clutter outside the manufactured home. In review of the evidence before me, I find that the tenants had demonstrated that they had made significant efforts to store their belongings, including incurring a financial burden of \$300.00 per month to do so. I am not satisfied that the alleged clutter justifies the end of this tenancy, nor does it satisfy the grounds provided on the 1 Month Notice.

Similarly, the landlord expressed frustration over the tenants' decision to tie ribbons and mark trees on the property. As confirmed by both parties, the tenants and landlord have appeared at several hearings before the RTB in regards to the same issues. I note the October 16, 2023 settlement references tree maintenance and how "the landlord will resume responsibility for tree maintenance" and how the "tenants must seek permission from the landlord to remove any living trees they wish to have removed from the pad site. These trees will be removed at the tenants' own cost" .

In light of the conflicting testimony between both parties, I am not satisfied that the landlord has established on a balance of probabilities that the conflict arises solely from the tenants' actions, but rather interpersonal differences and frustration between the parties.

I am not satisfied the landlord had provided sufficient evidence to support that the tenants have 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; put the landlord's property at significant risk or that they had caused extraordinary damage to the unit/site or property/park, especially to the extent that justifies the ending of this tenancy.

I find that that the tenants were forthright in their testimony, and admitted to acting out of frustration about the trees on the property. In review of all of the previous decisions, along with the evidence from this dispute, it is obvious that the relationship between the parties is strained. Although I acknowledge that the tenants' behaviour could be considered difficult, I do not find the behaviour to be serious enough to justify the ending of this tenancy

For these reasons, I am granting the tenants' application for cancellation of the 1 Month Notice. The 1 Month Notice dated September 25, 2024 is hereby cancelled, and the tenancy is to continue until ended in accordance with the *Act* and tenancy agreement.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. Accordingly, the landlord's application to recover the filing fee is dismissed without leave to reapply.

Conclusion

The landlord's application is dismissed without leave to reapply.

I allow the tenants' application to cancel the 1 Month Notice dated September 25, 2024 is cancelled and is of no continuing force or effect. This tenancy is to continue until ended in accordance with the *Act*.

The remainder of the tenant's application is dismissed with 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: December 5, 2024

Residential Tenancy Branch