Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, OLC

Introduction

This hearing was convened to deal with an application by the tenant pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for an order cancelling a 1 Month Notice to End Tenancy for Cause dated May 15, 217 (the "1 Month Notice"), for an order that the landlord comply with the Act, regulation, or tenancy agreement, and for an order that the landlord make repairs to the site or property.

The tenant attended the hearing with an advocate. An agent attended on behalf of the landlord. Both parties had full opportunity to be heard, to present affirmed testimony, to make submissions, to present documentary evidence, and to respond to the submissions of the other party.

Service of the tenant's application and notice of hearing was not at issue. At the hearing, there were five packages of evidence before me from the tenant and one from the landlord. Both parties acknowledged having received this evidence from the other party.

After the hearing I was provided with additional evidence from the tenant, which had been received by the Residential Tenancy Branch ("RTB") on July 3, 2017 and which the tenant had not mentioned during the hearing. In light of the late receipt of this evidence I am not accepting it. I have reviewed it, however, and note that it is largely duplicative of evidence already before me.

Preliminary issue: Adjournment

At the outset of the hearing the tenant sought an adjournment, on the basis that he lived remotely and had limited internet access and had been required to rely on another person to effect proper service of all materials. He also submitted that an adjournment would allow him additional time to remediate the rental site, which was at issue in this proceeding. I refused an adjournment after considering the criteria set out in Rule 7.9 of the Rules of Procedure.

Most importantly, the tenant had in fact served the RTB and the landlord with five packages of evidence, including written submission. As a result, I did not consider that an adjournment was necessary to provide the tenant with a fair opportunity to be heard. The landlord's agent did not raise any concerns with the timing of his receipt of the tenant's evidence or say that he had not had an opportunity to meaningfully respond to it. My receipt of the tenant's additional late evidence does not change my assessment, as that evidence was largely duplicative in any event.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the tenant entitled to an order that the landlord comply with the Act, regulation, or tenancy agreement?

Is the tenant entitled to an order that the landlord make repairs?

Background and Evidence

It was agreed that this tenancy began in 2012 for a three year renewable term. A copy of the original tenancy agreement was in evidence from the landlord. It states that rent is $450.00 monthly and due on the first of each month, "until hydro, water and outhouse complete. Rent will then be $500.00/month."

Although the agreement appears not to have been renewed in writing, the tenancy has continued past the original three year term. The landlord's agent was cautioned at the hearing that the landlord is responsible for having a written tenancy agreement.

The original tenancy agreement states that the landlord will provide water and hydro access and an outhouse hold, and the tenant will build a hydro shed and an outhouse. It also includes a provision that the tenant will "maintain a clean and organized yard." It also includes provision that the landlord will prove hydro access and that the tenant will pay the "monthly hydro bill in tenant's name."

The 1 Month Notice was served on the tenant on May 15, 2017, and the tenant applied to dispute it within the applicable time limit. It has an effective date of June 30, 2017. The tenant advised that he has paid rent for July, 2017.

The 1 Month Notice indicates that the tenant or a person permitted on the property by the tenant has "significantly interfered with or unreasonably disturbed another occupant or the landlord" and "put the landlord's property at significant risk." It also alleges that the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the site or property, has failed to repair that damage, has allowed an unreasonable number of occupants onto the site, had been repeatedly late paying rent, and has breached a material term of the tenancy agreement and failed to correct that breach within a reasonable time after written notice of same.

Landlord's submissions

The landlord's agent restricted his submissions to the last two grounds of cause alleged. Regarding the allegation of repeated late payment of rent, the landlord's agent set out a series of 14 dates between November, 2014 and present when tenant was alleged to have paid rent late. There was also correspondence between the landlord and tenant and banking documentation regarding the payment of rent was also in evidence.

Regarding the tenant's alleged breach of a material term, the landlord's agent stated that in 2016 a complaint was filed with the local government about the conditions at the site. He led me through a series of letters and emails, all of which were in evidence.

On April 22, 2016, a bylaw officer wrote the tenant, advising that the state of the property was in breach of a bylaw on "unsightly premises" and requiring immediate action.

On August 12, 2016 the bylaw officer wrote the tenant another letter, noting that very little effort had been made to address conditions at the property. The officer also advised that staff would be conducting another site visit around the end of the month,

and could enter the property, fulfil the requirements of the bylaw, and charge the property owner or occupier for same.

On January 5, 2017 the bylaw officer emailed the landlord directly, attaching photos of the site obtained during a September, 2016 site visit, and seeking the landlord's attention and cooperation on the basis that the tenant had made very little progress.

On January 13, 2017 the bylaw officer wrote the landlord directly again, advising of a continuing contravention, and an upcoming site visit set for February 14, 2017. The officer also stated:

> To date it appears that very little effort has been made to bring the property into compliance and remove even the smaller household garbage and refuse type items. The large amount of refuse, garbage and scrap salvage items located on the property is not at all acceptable, especially when there are people living in dilapidated recreational vehicles in and around these items.

The landlord and tenant reached a written agreement that the site would be substantially cleaned up by March 30, 2017. A copy of that agreement was also in evidence. It is signed by the landlord and the tenant and AW, and reads as follows: "As discussed on Feb 17, 17 with respect to garbage removal, all parties ([tenant, AW and landlord]) have agreed to site clean-up and garbage disposal by the 30th of March 2017 . . . substantial change."

Also in evidence from the landlord were emails between the landlord and the bylaw officer and between the tenant and the bylaw officer over the spring of 2017, on the progress being made at the site.

The agent stated that after the March 30, 2017 date had passed and the site was not sufficiently clean, the landlord attempted to negotiate a mutual agreement to end tenancy with the tenant. No agreement was reached.

On May 26, 2017 the bylaw officer wrote the landlord again, advising that she had conducted a site visit on May 3, 2017 and met with the tenant and his son: "Since we last met together on the site February 17, 2107 there has been 5 derelict vehicles and several loads of scrap metal removed. However, the cleanup that has occurred is still not satisfactory and has not brought the property into compliance with the regional districts unsightly premises bylaw" (reproduced as written). The officer advised that the local government was preparing to clean the property and charge the landlord for the

cost of doing so. Attached to the letter were photographs of the site as of May 3, 2017, showing a still very cluttered and unsightly property.

Also in evidence from the landlord are copies of undated texts between the landlord and tenant in which the landlord states as follows: ". . . things are not looking good with the property. By law and region are on me because of the messy situation on your dwelling." The tenant's response is: "The mess situation is steadily improving & they are aware of that fact I am in regular contact with the bylaw enforcement officer who has the file." And the landlord then responds: "I understand that. But it is less and less up to me anymore . . . now they are getting serious and I don't want to be bothered at my home. They got in touch with me today threatening to get rid of all the stuff and slapping me with a huge fine. Not cool. . . . if everything goes well with the bylaw then anything that belongs to you is restricted to the area we agreed upon last time . . . ." In another text the landlord says that he "wants the property to be clean . . . that is also our wish . . . it is not a storage facility and I want bring it back to a decent state . . . the way it is now is not OK. We will have to make big changes."

Tenant's submissions

In written and oral submissions the tenant stated that he has always been willing to clean-up but that his efforts have been slowed by his farming, financial constraints, and an injury. He testified that he has been in communication with the compliance officer in charge of the file throughout, and that she has always found him willing and compliant. The tenant also stated that the bylaw official has been clear with him that the concern is not simply with respect to his site but also with respect to the state of the property in general.

The tenant provided photographs of the site as of June 16, 2017, indicating that the area was substantially clear as of that date. He also provided an email from the compliance officer dated June 27, 2017 commenting on the site: "This is good progress and two of the areas that needed the most attention. Thank you for providing the pictures. I have added them to our file."

The tenant testified that his hand had been badly injured in March and that he had been required to have surgery. He was not able to return to work until May 12, 2017.

He further testified that his clean-up efforts have been hampered by a financial crisis caused by the fact that other tenants have moved onto neighbouring sites and that they have connected to the one hydro connection available to the whole property. The

landlord is also using that hydro connection when he is around, and that this has caused the hydro bill, which is in his name, to skyrocket. Specifically, he stated that hydro costs rose significantly in January of 2016. The tenant suggested that while in 2012 having one hydro connection for the whole of the landlord's property and for multiple sites may have conformed to the regulations, it is no longer acceptable.

In written submissions the tenant stated as follows:

> Hydro is provided by a serious of joined cables, lying on the ground, between the tenant's own mobile home and the meter base on an empty building, a distance of 400 feet. There is only one hydro meter, located on an empty building.
>
> When the landlord takes on additional paying tenants, each in their own mobile home, their hydro access is provided by extension cords, or other cords, running longs distance, on the ground, or 14/2 electrical line strung thru the trees, from the one hydro meter on the property.
>
> These temporary methods of providing hydro service to paying tenants, causes a great deal of "line loss" . . .
>
> The tenant . . . is thus put in the position, by the landlord, of needing to ascertain, without the aid of individual hydro meters, how much each tenant should pay as their share of the combined hydro cost. The tenant is also put in the position of needing to collect those funds in order to pay the hydro bill. . .

Also in evidence from the tenant are copies of texts between the parties. In one, dated March 7, 2017, they discuss when the tenant pay his month, and then the tenant raises the hydro costs, and says that the other renters have not paid and he cannot afford to pay the landlord's share, to which the landlord responds: "Not my problem. . . u chose to have hydro under ure name. I don't have anything to do with the hydro" (reproduced as written). In a later text the landlord appears to be willing to address the issue.

The tenant also provided written submission on the water supply, stating that water comes from a pond but is not potable, so that the tenants must haul their own drinking water from dispensaries off site.

Based on the above the tenant also seeks an order that the landlord comply with the Act and install separate meters, or that the landlord take over the hydro account and

assume responsibility for apportioning the costs. The tenant says that he can assist with the installation of separate meters by providing parts.

The tenant said that the water system is “semi-manageable” to him, but that he would like a coarse water filter to be purchased by the landlord in order to protect shower heads, laundry, etc. The tenant states that he is willing to install the filter at no cost to the landlord.

Analysis

Is the tenant entitled to an order cancelling the 1 Month Notice?

Section 40(1)(a) of the Act allows a landlord to end a tenancy for cause where the tenant is repeatedly late paying rent. However, a landlord who has repeatedly accepted the late payment of rent without issuing a 10 Day Notice to End Tenancy for Unpaid Rent cannot necessarily rely on this section to terminate a tenancy.

Here, the landlord has clearly sanctioned the late payment of rent. This is clear in the text communication between the parties as well as in the fact that rent has been regularly late. This also appears to a relationship where the amount owing is affected by the labour the tenant has performed. Accordingly, I cannot find that there is cause to end the tenancy under this section of the Act.

The landlord has now, by relying on the repeated late payment of rent in the 1 Month Notice, given the tenant notice of his intention to insist on the timely payment of rent. The tenant is cautioned that rent must be paid on the first day of each month going forward.

Section 40(1)(g) of the Act allows a landlord to end a tenancy for cause where the tenant has breached a material term of the act and failed to correct that breach within a reasonable amount of time after written notice to do so.

The tenant’s obligation to keep the site clean and organized may or may not be a material term of the tenancy agreement. Residential Tenancy Branch Policy Guideline # 8 describes a material term as one that is so important that both parties agree that even the most trivial breach gives the other party a right to end the agreement. Here, the landlord has been very slow to respond to the state of the tenant’s site, which suggests the landlord himself has not regarded the requirement that the tenant keep the

site clean and organized as a material term. As per Policy Guideline #8, the burden is on the landlord to establish that the term is a material one. The landlord's agent did not address this in his submission.

However, I do not need to decide whether the term is material because the landlord has failed to give the tenant notice in writing of a breach of the material term in any event. Although the tenant was made aware that the condition of his site was a concern in 2016, when he received letters from the regional district, those letters, and all subsequent communication from both the regional district and the landlord, cautioned only that the tenant or the landlord could be responsible for the costs of clean-up if the district was required to do the work.

Policy Guideline #8 states that in order to end a tenancy for breach of a material term, the landlord must first inform the tenant in writing that there is a problem, that he believes the problem is a breach of a material term, that the breach must be corrected by a specified date, and that if the breach is not corrected the landlord will end the tenancy.

At no point did the landlord convey the required information to the tenant in writing. Instead, the landlord relies on the correspondence in 2016 to the tenant from the regional district. The March 2017 agreement does not convey the information either. In fact, the landlord appears to be taking some responsibility for the clean-up, along with the tenant, in that agreement. Nor do the undated texts in evidence from the landlord suggest the tenant was given adequate warning of the jeopardy to his tenancy.

The landlord's casual attitude toward the tenancy has benefitted both parties in many ways. It is clear that the landlord and the tenant have a rapport and have managed to work many things out as between themselves cooperatively. However, the landlord cannot now rely on the tenant's failure to remediate the property as a reason for ending the tenancy without having given him adequate warning that his tenancy was in jeopardy. (Had the landlord complied with the Act and the policy on this matter, I would not necessarily have accepted that the tenant's injury or his financial or work circumstances justified his failure to clean-up the property.)

Is the tenant entitled to an order the landlord make repairs or comply with the Act?

Both the landlord and the tenant are required to maintain reasonable standards around health, cleanliness, and safety. Section 26 of the Act requires the landlord to comply with housing, health and safety standards required by law. Section 21 requires the

landlord to provide the services essential to the tenant's use of the manufactured home site as a site for a manufactured home.

The tenant did not make submissions on the local requirements for water supply and safety/potablity. The landlord may be in breach of the legal requirements in this regard. Accordingly, I order the landlord to investigate and comply with the regional district's requirements around the supply of water and potable water.

Likewise, the tenant did not establish that the manner in which electricity is provided to the sites in in breach of applicable safety standards. However, the fact that the other renters are accessing hydro by way of cords that run along the ground concerns me. Accordingly, I also order the landlord to investigate and comply with the applicable laws and safety standards around the provision of hydro services.

Policy Guidelines #1 and #8 together suggest that the landlord's allowing the tenant to collect money from other renters for the shared utility is not appropriate. It is the landlord's responsibility, not the tenant's, to collect monies from his other renters.

The tenant also testified that the amount of the hydro bill when hydro is being used by other parties is a burden to him financially. There are many cases where the requirement that a tenant collect hydro payments from other renters has been found to be an unconscionable term, pursuant to section 6(3)(b) of the Act.

In this case I find that having the tenant collect hydro payments from several other renters is an unconscionable term. Accordingly, I order the landlord to either install separate meters or to transfer the hydro account into his name.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The tenancy will continue until it is ended in accordance with the Act.

I order the landlord to investigate and comply with the regional district's requirements around the supply of water and potable water no later than August 31, 2017.

I also order the landlord to investigate and comply with the applicable laws and safety standards around the provision of hydro services no later than August 31, 2017.

I also order the landlord to either install separate meters or to transfer the hydro account into his name no later than August 31, 2017.

Both parties are reminded of their shared obligations to repair and maintain the property under s. 26 of the Act. The tenant is cautioned that rent must be paid when due going forward.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 07, 2017

Residential Tenancy Branch