Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding PARK SANDS BEACH RESORT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

The hearing dealt with the Landlord's Application for Dispute Resolution ("Application") under the Manufactured Home Park Tenancy Act (the "Act"), for an early termination of the tenancy and an Order of Possession under section 49 of the Act, and recovery of the filing fee for the Application under section 65 of the Act.

Both Tenants, J.G. and R.J., and the Landlord's Agent, M.S., attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

As both parties were present, service was confirmed at the hearing. The Tenants confirmed receipt of the Notice of Dispute Resolution Package (the "Materials"). Based on their testimonies I find that the Tenants were served with these materials as required under section 82 of the Act.

Issues to be Decided

1. Is the Landlord entitled to an order ending the tenancy early?
2. Is the Landlord entitled to an Order of Possession?
3. Is the Landlord entitled to recover the filing fee for the Application from the Tenants?

Background and Evidence

The attending parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy agreement:

- The agreement started in October 2022.
- The Tenants own their residence, which is an RV, and rent a site on the manufactured home park run by the Landlord.
- Monthly rent is presently $1,365.00 per month, though the Tenant J.G. carries out work for the Landlord as payment for rent.
- There is no written tenancy agreement. The agreement was only verbal.
- The Tenants still occupy the rental site.

The Landlord's Agent, M.S., testified as follows. J.G. befriended a senior couple, who were occupants of the park, and carried out work for them. I was referred to a written statement of M.S. and court document that had been submitted into evidence.

The court document is provided by a Court Liaison and is dated January 27, 2023. The document states that J.G. has been charged with acts contrary to section 380(1) of the Criminal Code, specifically defrauding monies by deceit, falsehood, or other fraudulent means. The document confirms the alleged acts took place between May 1, 2022 and June 30, 2022.

M.S. further testified that J.G. had convinced the couple to move from the park and provide a down payment of $7,500.00 to rent a property in Prince Edward Island for a period of two years. The occupants arrived at address and discovered tenant did not own property in Prince Edward Island. They tried to reach the Tenants to request the money back with no response.

M.S. stated they are concerned as J.G. works with 30 of the year-round occupants of the park who are seniors and so are at risk. They said "Pretty much all" the other occupants of the park provided statements that they had items stolen from them, but they were not submitted into evidence. The local pawn shop has banned the Tenants from using the shop as they had exchanged stolen items there. The pawn shop

provided confirmation that items stolen from occupants of the park were taken to them. Evidence of this confirmation was not provided by the Landlord.

There was a report that J.G. broke into an empty cabin on the park when M.S. was away from the site. As a result, a security worker was hired. When the Tenants' guests came to the park, there was suspicion they used drugs. The security worker confronted them and since that confrontation J.G. "continued to harass" the security worker.

I was referred to a screenshot of a WorkSafeBC claim that had been submitted into evidence. Personal information and details of the claim were redacted, though the date of injury was listed as November 1, 2022 and the claim was accepted January 24, 2023. The nature of injury was given as "Mental disorder or syndrome".

M.S. stated this was a mental injury caused by the Tenants' harassment. When asked for specific details regarding the harassment, M.S. stated J.G. attempted to headbutt the security worker and a friend of the Tenants attempted to charge them.

I was referred to a witness statement from another occupant of the park that had been submitted into evidence. The statement alleges that J.G. said that the occupant and their dog were "dead" and threatened to cut break lines. A dead dehydrated rat was placed at the occupant's door and they are seeking a peace bond.

I was referred to screenshots of text messages submitted into evidence referencing a heater stolen by J.G. M.S. Stated that a heater which had gone missing from an occupant's property was found in a place used by J.G. to store items.

I was referred to a brief text message from another occupant of the park stating J.G. stole "many things". that B.J. sells drugs and that "they are both not very good people to have around".

M.S. stated the Tenants had caused damage to property by hoarding and keeping hazardous waste on the site, leading to a rodent infestation. Notices to End Tenancy were issued to the Tenants regarding these matters in October 2022 and February 2023. The Tenants were allowed to stay when they said they would clean up. A fence had been broken after items were leaned up against it.

An eyewitness said they saw rodents running from the property when the Tenants were cleaning. M.S. read guidance from a government website on reducing rodents on

properties and concluded the Tenants' site is a breeding ground for rodents. They stated the Tenants' resident was like a "landfill" though no evidence was submitted regarding this issue.

The Tenants testified as follows. They have the deed for their property in Prince Edward Island and the contract signed by the couple accusing them of fraud. The matter is being disputed in court currently. The couple wanted to "back out" of the contract, a rent-to-own agreement, which was not allowed under the terms of the contract. They denied receiving any contact from the couple when they were at the Prince Edward Island property.

J.G. denied stealing the heater and stated this was another occupant's. J.G. was cleaning up a property as the occupant was a hoarder. J.G. was asked to take a heater to the dump for them, which they agreed to. The heater was loaded onto a truck but as it was metal, J.G. took it off as they were taking only wood to the dump at that time. Another occupant then saw the heater and said it was theirs.

The Tenants denied the allegations regarding stealing "many things". J.G. said they did renovations for the occupant who sent the text message in which the allegations were made. J.G. was not paid for the renovations and denied theft, stated the only thing he ever got from that occupant was an air fryer that was given to them.

The Tenants denied the allegations regarding the dehydrated rat and other threats made by an occupant of the park. They stated that J.G. had refused to do free work for that particular occupant so the statement was made out of guilt.

Regarding the matter relating to the security worker, R.J. testified that when a friend was dropping them off after a shopping trip, the security worker attacked their friend, though they did not press charges. J.G. stated the security worker would come over and instigate fights. The owner of the park also got into a physical fight with security worker towards the end of their employment at the park and M.S. admitted they should never have hired them. J.G. denied headbutting or attempting to headbutt the security worker and stated they would come "up in my face" inviting J.G. to hit them.

R.J. stated that mess at their residence had now been cleaned up and the fence repaired. They also stated the rodents had been dealt with, though pointed out rats had been seen all over the park and the owner had an issue on their property themselves.

Analysis

The Landlord requests an early end of the tenancy under section 49 of the Act. A landlord may end a tenancy early under this section where a tenant or a person permitted in the manufactured home park by the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the manufactured home park.

The grounds as set out above are echoed in section 40 of the Act which confirms how a landlord may end a tenancy for cause. The key difference between the two sections is that under section 49 a landlord is not required to issue a notice to end tenancy on the basis that it would be unreasonable or unfair to the landlord or other occupants of the manufactured home park to wait for the effective date of a one month notice to end tenancy for cause to take effect, i.e. at least a month.

Early end of tenancy is an expedited and uncommon method of ending a tenancy and as confirmed by policy guideline 51, the onus is on the landlord to provide sufficient evidence to prove that on the balance of probabilities, the tenant committed the serious breach.

The director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the manufactured home park to wait for a notice to end the tenancy for cause to take effect. Without sufficient evidence the application will be dismissed. Examples of breaches referred to in the policy guideline 51 include violent acts committed by a tenant.

The Landlord put forward multiple reasons as to why they wish to end the tenancy early.

Allegations of defrauding occupants of the park

This allegation, if proven, would fall into a breach outlined in section 49(2)(a)(iv)(C) of the Act, namely, that the Tenant as engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord.

It was agreed by both parties, and evidenced by the documentary evidence submitted, that there is an active court case regarding this issue. The Tenant denied the allegations of fraud, stating they do in fact own the property in Prince Edward Island and there was a contract in place, which the alleged victims of fraud wanted to back out of.

I find that in and of itself, the charge of fraud against the Tenant does not prove, on a balance of probabilities, that an illegal activity outlined in section 49(2)(a)(iv)(C) of the Act occurred. No witness statements from the alleged victims were put forward by the Landlord and no one involved in the matter directly, other than the Tenants, provided testimony. M.S. provided testimony on how the course of events was communicated to them by the couple. In light of the above, I find the Landlord has failed to satisfactorily prove, on the balance of probabilities, that a breach under section 49 of the Act occurred.

Furthermore, the alleged incident took place many months before the Application was submitted. Keeping in mind the requirement set out in section 49(2)(b) of the Act that the Director must satisfied that it would be unreasonable, or unfair to wait for a notice to end the tenancy to take effect, I find the extensive period of time that has elapsed since the alleged incident occurred an additional reason to deny the request to end the tenancy early on this ground.

Allegations of theft from park occupants and threats to other occupants

The Landlord put forward claims which align with breaches set out in sections 49(2)(a)(i) and 49(2)(a)(iv)(B), namely that the Tenants have significantly interfered with or unreasonably disturbed another occupant of the park or the Landlord and engaging in illegal activity has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the manufactured home park.

A written statement and a text message were provided in support of the claims made by the Landlord. These documents amount to third-party testimony, which was not

corroborated by either party being called as a witness. The Landlord made claims that local pawn shop confirmed the Tenants were banned due to exchanging stolen items and that many statements had been taken from other occupants from the park regarding thefts, however no documentary evidence of this was submitted and again, no witnesses were called to substantiate the claims.

I find the Landlord's allegations were mostly general, euphemistic, and vague. The Tenants vehemently denied the claims and put forward an explanation in response to the allegations regarding the one specific item they were accused of stealing, namely the heater, which I find plausible. Given this, I give greater weight to the Tenants testimony and find the Landlord has failed to prove the Tenants were responsible for a breach of the Act as alleged.

Harassment of the security worker

The Landlord alleges that the Tenants harassed a security worker which resulted in a mental injury, causing them having to leave the Landlord's employment. These allegations match a breach set out in section 49(2)(a)(ii) of the Act, specifically that the tenant seriously jeopardized the heath and safety of the landlord or another occupant.

Based on the documentary evidence submitted by the Landlord, I accept that a WorkSafeBC claim was submitted by the Landlord regarding an injury to an employee which occurred on November 1, 2022, and that the claim was approved on January 24, 2023. There is little else that can be gleaned from the documentary evidence.

There was no other evidence such as incident reports from the Landlord employer, or witnesses called to verify any allegations of harassment. The Tenants made counter-allegations regarding the conduct of the security worker which were more specific and detailed than the Landlord's. Given this, I find the Landlord has failed to prove, on a balance of probabilities, that the above allegation occurred as alleged and constitutes a breach of section 49 of the Act.

Furthermore, I note the date of injury specified on the WorkSafeBC application is many months prior to the submission of the Landlord's Application. Again, due to the amount of time that has elapsed since the incident itself and the Landlord submission of the WorkSafeBC application, I find the Landlord had ample opportunity to serve a notice to end the tenancy under section 40 of the Act and for the notice to take effect. Therefore,

I find that the Landlord has failed to prove the requirements under section 49(2)(b) of the Act have been met and the tenancy can not be ended early on this ground.

Damage to property

The Landlord stated the Tenant caused damage to the park. As stated in section 49(2)(a)(v) of the Act, if the tenant has caused extraordinary damage to the manufactured home park, this is a ground on which the tenancy can be ended early.

I find the Landlord's request to end the tenancy early on this ground fails for two reasons.

Firstly, no evidence to substantiate the Landlord's claims was submitted. Photographs of the Tenants' residence were mentioned but they were not submitted as evidence. Reference to eye-witnesses seeing rodents on the Tenants' residence was also made, but no written statements were submitted to corroborate this and no witnesses were called by the Landlord. Accordingly, I can afford little weight to the testimony of the Landlord and, given that the Tenants disputed the testimony of the Landlord with clear and forthright testimony of their own, I find the Landlord has failed to prove, on a balance of probabilities, that the tenancy should be ended early on this ground.

Secondly, the Landlord's Agent testified that notices to end tenancy were already served to the Tenants regarding this issue in both October 2022 and February 2023. The effective date of notice to end tenancy issued in October 2022 would have certainly been reached by the time the Landlord's Application was submitted on April 11, 2023. Considering that section 49 of the Act states the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect, I find this means this is not a valid ground to end the tenancy early.

In light of the above, I find that the Landlord has failed to prove they are entitled to an Order of Possession under section 49 of the Act and therefore the Application is dismissed without leave to reapply.

As the Landlord has not been successful in their Application, I find they should bear the cost of the filing fee.

Conclusion

The Application is dismissed. The tenancy continues.

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

Dated: May 03, 2023

Residential Tenancy Branch