Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, DRI, OLC, CNR, OLC, FFT, CNC, DRI, OLC, FFT / OPU, MNRL, FFL

Introduction

This hearing dealt with four applications pursuant to the *Manufactured Home Park Tenancy Act* (the Act). The landlord's application for:

- an order of possession for non-payment of rent and utilities;
- a monetary order for unpaid rent in the amount of $760; and
- authorization to recover the filing fee for this application from the tenants.

And the tenants' applications for:

- a determination regarding their dispute of a rent increase by the landlord;
- the cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "**10 Day Notice**");
- the cancellation of the One Month Notice to End Tenancy for Cause (the "**One Month Notice**");
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement; and
- authorization to recover the filing fee for two of the applications from the landlord.

This matter was reconvened from a prior hearing on January 24, 2023. I issued an interim decision setting out the reasons for the adjournment on that same date (the Interim Decision). This decision should be read in conjunction with the Interim Decision.

At the January hearing, the landlord completed its submissions on its application. At this hearing, the tenants completed their submissions, but there was insufficient time for the landlord to respond. I gave the landlord the option of either reconvening the application at a later date to allow him to make response submissions, or to provide written submissions after the hearing. The landlord selected to make written submissions. I advised him that these must be provided to the Residential Tenancy Branch (RTB) no later than April 14, 2023, and I would not, for the purposes of section 70 of the Act, consider these proceedings concluded until that day.

The landlord provided the RTB with its submissions on April 13. I have reviewed them and incorporated them into my decision.

Issues to be Decided

Is the landlord entitled to:

1) an order of possession;
2) a monetary order for $760; and
3) recover the filing fee?

Are the tenants entitled to:

1) an order cancelling the 10 Day and the One Month Notices;
2) a cancellation of a rent increase;
3) an order that the landlord comply with the Act;
4) recover the filing fee of two of their applications?

Evidence and Analysis

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

1. Tenancy agreements

Tenant VL and the landlord entered into a tenancy agreement to rent the manufactured home site (the Site) on May 10, 2010 (the 2010 Agreement). Monthly rent started at $345.00 and had increased to $450.70 as of June 2022. It contained terms that the rent includes a maximum of two people occupying the site and that if the tenant wanted to change the permitted occupants, she was required to get landlord approval.

VL and her husband occupied the Site until her husband passed away. In July 2022, VL wanted her sister, ES to move onto the Site.

The landlord required that VL and ES enter into a new tenancy agreement, with a monthly rent of $725, before it would permit this (the 2022 Agreement). The tenants and the landlord's president (JN) met on August 16, 2022, to discuss the matter. The tenants testified that JN pressured and coerced them into signing a new tenancy agreement with a monthly rent of $725. JN denied pressuring or coercing the tenants. He testified he met with the tenants, went through each term of the 2022 Agreement,

and then left them alone for 30 minutes to discuss. He testified they willingly signed the 2022 Agreement, and it argued should be binding.

The landlord testified that the tenants subsequently attempted to pay rent in accordance with the 2010 Agreement and not the 2022 Agreement for September and October 2022, which he refused and he issued the 10 Day Notice on that basis.

Before determining whether the tenants were coerced into entering the 2022 Agreement, it is necessary to look at 2010 Agreement in more detail.

The 2010 Agreement includes a clause regarding new occupants. It states that the tenant shall promptly apply in writing for the landlord's approval for such person to become a permanent occupant, including references and other information required by the landlord to confirm the suitability of the proposed occupant (the Occupants Clause).

The Occupants Clause does not consider whether additional rent would be due as a result of a new occupant occupying the site. Section 40 of the Act permits a rent increase in excess of the annual rent increase when an additional occupant moves in only if such an increase is authorized by the tenancy agreement.

The 2010 Agreement does not contain any such authorization. It states that the monthly rent is for two occupants. It is not therefore open to the landlord to impose a rent increase when a new occupant moves in. Rather, I understand the Occupants Clause to give the landlord a means of vetting prospective occupants to ensure that they would be suitable for the manufactured home park (the Park). It is not designed to allow a landlord to collect additional rent when a new occupant moves onto the Site.

As such, when VL wanted ES to move on to the Site, the 2010 Agreement only required that she receive approval from the landlord. Under the contractual framework she had in place, it was not required for ES to be added as a party to the 2010 Agreement or for a new tenancy agreement to be created.

On July 25, 2022, VL emailed the landlord:

> I wanted to let you know that my sister ES will be moving in with me to help me with maintenance and finances in today's world.

The landlord's agent responded:

> I am attaching an application for tenancy[…]

The tenant responded:

> My sister has moved in to become my caregiver […] she will not be renting or co-renting the property. She will be helping with food, utilities, etc however the property will remain in my name solely. ES will not be renting anything from [the landlord] therefore I don't see why she would need to fill out an application to rent.

The landlord's agent responded:

> If your sister is living with you for any reason, whether she is a caregiver or just a person living in your home she still has to fill out an application for tenancy. Those are the rules of the park.

Based on my interpretation of the Occupants Clause, I find this last statement of the landlord is incorrect. The 2010 Agreement permits the tenant to have a new occupant move onto the Site, subject to the landlord's approval. The landlord is permitted to screen potential occupants on suitability. Given that the landlord entered into the 2022 Agreement with ES, I conclude that the landlord found ES to be suitable.

Ultimately, the tenants submitted application for tenancy form provided by the landlord's agent, but modified it, writing "[ES is] not responsible for rent" and crossing out any reference to a new amount of rent she would be required to pay.

Despite this, the tenants ultimately signed the 2022 Agreement on August 16, 2022. However, on August 21 they sent the landlord a letter via registered mail declaring the 2022 Agreement "null and void". They wrote that they felt they signed it under duress and have been advised that they should not have signed it without further investigation into the legality of the terms within it.

Based on the evidence submitted, I find that VL attempted adhere to the 2010 Agreement when having ES move onto the Site. She attempted to get the landlord's approval and pushed back multiple times on the landlord's assertion that her sister would need to become a tenant. Despite this, the landlord's agent reiterated the incorrect position that ES would need to become a full-fledged tenant if she wanted to move onto the Site.

This was a misrepresentation of the facts. The 2022 Tenancy Agreement contains an almost identical Occupants Clause. The landlord drafted both agreements and new or ought to have known the contents of those agreements.

The landlord refused to allow VL to exercise her rights under the 2010 Agreement and repeatedly misrepresented the process she must follow to allow ES to move onto the Site. I find that the tenants relied on this misrepresentation when making their decision to enter into the 2022 Agreement.

In *Kingu v. Walmar Ventures Ltd*., 1986 CanLII 142 (BC CA), the BC Court of Appeal out factors which would allow a contracted to be rescinded on the basis of innocent misrepresentation:

> (a) A positive misrepresentation must have been made by the defendant. ...
> (b) The representation must have been of an existing fact ...
> (c) The representation must have been made with the intention that the plaintiff should act on it...
> (d) The representation must have induced the plaintiff to enter into the contract ...
> (e) The plaintiff must have acted promptly after learning of the misrepresentation to disaffirm the contract ...
> (f) No innocent third parties must have acquired rights for value with respect to the contract property ...
> (g) It must be possible to restore the parties substantially to their pre-contract position ...

I find that the facts of this case satisfy all of these criteria. The landlord misrepresented the process for allowing ES to reside on the Site. The process was set out in the 2010 Agreement. The landlord required the VL to act on this representation by filling out the tenancy application for ES. The tenants entered into the 2022 Agreement on the mistaken belief that this was the only was ES could reside on the Site. Within days of signing the 2022 Agreement, they declared their position that it was invalid. No third parties acquired rights as a result of the misrepresentation. It is possible to restore the parties to the pre-2022 Agreement position by reinstating the 2010 Agreement.

Accordingly, I find that the 2022 Tenancy Agreement invalid. I order that it is rescinded and is of no force or effect.

The 2010 Agreement governs VL’s tenancy with the landlord. ES is not a party to that agreement and has none of the rights or obligations under the Act that are afforded to

tenants. Based on the landlord's willingness to enter into a new tenancy agreement with ES, I deem that it has granted the authorization necessary under the Occupants Clause.

As the 2010 Agreement has been reinstated, I do not find that VL was required to pay the increased amount of rent under the 2022 Agreement. As such, I cancel the 10 Day Notice. I dismiss the landlord's application for an order of possession for unpaid rent.

2. Does VL owe any unpaid rent?

In September and October 2022, VL attempted to rent pursuant to the 2010 Agreement via transfer. The landlord refused to accept these payments. Due to this refusal, VL did not attempt to pay the landlord any rent for November and December 2022 or January 2023. VL paid, and the landlord accepted, February and March rent in the amount of $450.70. I cannot say whether rent was paid for April or May.

Based on this, I find that the tenants are five months in rental arrears. I find it likely that, had the landlord accepted the September and October payments, on a without prejudice basis, VL would have continued making payments in accordance with the 2010 Agreement. As such, while the rent has been unpaid, I assign no blame to VL for this, and I do not consider it "late". It was unpaid due to the actions of the landlord.

Despite that, VL must pay the rent she owes. I order her to pay the landlord $2,253.50 representing five months of unpaid rent. Given that a lumpsum payment of this size may be difficult for VL to make immediately and given that this amount has accrued due to the landlord's actions, I find it appropriate to give VL until August 31, 2023 to pay this amount.

3. Is the One Month Notice valid?

On December 17, 2022, the landlord served the tenants with the One Month Notice. It listed the reasons for ending the tenancy as:

- The tenant is repeatedly late paying rent.
- The tenant has not done required repairs of damage to the site/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 landlord provided the following details of these causes on the One Month Notice:

> The tenants have failed to pay rent when it is due on the first day of each month and failed to initiate, let alone complete, repairs and improvements to the shed, the unit and the site agreed to in addendum number one of the tenancy agreement and specified in warnings to the tenants. Further, the tenants had unilaterally tried to amend the tenancy agreement without landlord approval in violation of article 14 of the Manufactured Home Park Tenancy Act.

As stated above, I do not consider any missed rental payments from September 2022 to January 2023, to be "late" for the purposes of the Act. These amounts were not paid due to the landlord's refusal to accept September and October rent payments.

At the hearing, JN stated that the unilateral change to the tenancy agreement referred to in the Notice was referring to the tenants' August 21, 2022 letter in which they declared the 2022 Agreement "null and void". I have rescinded the 2022 Agreement. I do not find the tenants' declaration that it is "null and void" amount to a breach.

a. Did the tenants repair the damage the caused to the site?

Section 40(1)(f) of the Act allows a landlord to end a tenancy if a tenant does not repair damage to the manufactured home site, as required under section 26 (3). Section 26(3) of the Act requires a tenant to repair damage caused by the actions or neglect of the tenant.

On August 17, 2021, the landlord provided the tenants with written notice following an inspection of the Site.

1) You have failed to maintain the swale and rear yard of [the Site] in violation of [park rules] further you have items stored outside in contravention of [the park rules], and failed to replace 14 inches of grass adjacent to the skirting with gravel or paving stones and a landscape sleeper, in violation of [the park rules]. The brush must be removed from the rear yard, your trees trimmed, outside storage removed and gravel strip installed as per [the park rules] by August 31, 2021.
2) You have failed to maintain the siding and trim on your home and shed. These must be power washed and painted regularly per [the park rules]. You have added a lean-to to your shed without our approval in contravention of [the park rules]. The lean-to must be removed and your siding painted by September 17, 2021
3) You have a "mishmash" of fencing, much of which is non standard and non standard railings in contravention of [and the park rules] and you have installed a

satellite dish on the front of your home in contravention of [park rules]. These must be corrected by September 30, 2021.

4) You have failed to maintain the rainwater gutters, and failed to extend rainwater leaders to direct rainwater away from the home and underground via 4 inch PVC piping to a drainage course as directed by the landlord per [the park rules].
5) You have failed to construct a garbage and recycling bin enclosure and you have failed to construct a 32 to 36 inch wide concrete walkway to the enclosure and your shed per [the park rules].
6) All steps and decks must be non slip, built to code and have railings complete with pickets to match those on homes [redacted] at must be painted or stained per [the park rules].

An addendum to the 2022 Agreement contained a list of items the landlord required the tenants to repair. However, as I have rescinded the 2022 Agreement, I do not find it necessary to recount those here.

For the reasons that follow, I do not find that any of the grounds listed on the August 2021 notice can amount to damage caused by the tenant to the manufactured home site, and cannot therefore form the basis for ending the tenancy.

Section 26(2) of the Act requires a tenant to maintain the Site. However, section 40 of the Act does not allow a tenancy to be terminated for a failure to do so. As such, I do not find any alleged failure to maintain the swale, the rear yard, the brush, or the trees on the Site can be a basis to end the tenancy.

The Act does not authorize a landlord to end a tenancy for failure to maintain or to repair damage to the manufactured home itself. Accordingly, any maintenance or repairs to gutters which have not been done cannot form the basis to end the tenancy.

I do not find that a failure to make upgrades to the Site or the manufactured home amounts to a failure to repair damage. As such, VL's alleged failure to replace her fencing, replace grass with gravel, extend the gutter system, bring her steps and deck to code, construct a garbage and recycling bin enclosure, or painting the manufactured homes' siding amounts to a reason the tenancy may be ended.

Similarly, I do not find that a failure to meet the requirements set out in the park rules amounts to a failure to repair damage. As such, the existence of an unauthorized lean-to or a satellite dish, or the storage of items outside the manufactured home cannot form the basis to end the tenancy.

None of the items set out in August 2021 notice can amount to reasons to end the tenancy due to damage caused to the Site by the tenants.

Additionally, if the presence of the storage shed on the Site is causing damage, I do not find that the tenants are responsible for that damage. VL gave uncontroverted evidence that the shed was on the Site prior to the start of the 2010 Agreement. As such, she is not responsible for whatever damage the shed caused to the Site.

b. Did the tenants breach a material term of the tenancy agreement?

The One Month Notice did not specify what term specifically the landlord considered to be material. In its written submissions, the landlord wrote:

> The tenants have violated our Tenancy Agreement, the Rules for the Park, the conditions under which we allowed [VL] to bring her sister into [the Manufactured Home Park] and the MHPTA which are breaches of material terms of the tenancy agreement.

This description is not precise enough for me to determine what terms exactly the landlord considers material.

After hearing, JN suggested that the rules of the park where all material terms, and the tenants' failure to comply with them amounted to material breaches.

RTB Policy Guideline 8 discusses material terms. It states:

> 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 Residential Tenancy Branch will focus upon 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.

I do not find that the manner in which VL brought her sister into the Manufactured Home Park could have amounted to a material breach, if it was a breach at all, as rather than ending the tenancy the landlord attempted to enter into a new tenancy agreement.

RTB Policy Guideline 8 continues:

> To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – 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.

The landlord is not provided any documentary evidence which shows that they provided VL with written notice that it considered the tenant to be in breach of a material term of a tenancy agreement and that if it was not fixed by a deadline the landlord would end the tenancy. In the absence of such a document, I cannot find that the landlord has satisfied its requirements to end the tenancy for the breach of material terms.

Accordingly, it is not necessary for me to determine which terms of the tenancy agreement are or are not material.

These reasons, I find that the One Month Notice is invalid and of no force or effect.

4. Are the tenants entitled to an order that the landlord comply with the Act?

The tenants seek a declaration that the 2022 Agreement is invalid, and the 2010 Agreement is the governing tenancy agreement. I have already made such an order.

They also seek an order permitting ES to continue residing on the Site. I have already made such an order.

Finally, the tenants seek an order that the landlord refrain from asking them to comply with the park rules. The tenants did not make lengthy submissions about which rules in particular if they wanted the landlord to stop enforcing come any of the rules to be involved.

In their written submissions, the tenants wrote:

> The rules of the park relied upon by [the landlord] are unreasonable and non-compliant with the Act.

The copy of the park rules submitted into evidence as an addendum to the 2022 Agreement. There are 72 densely-worded rules. Without specific submissions on the validity of specific rules, I cannot make a determination on whether they are unreasonable or non-complaint. I do not find it appropriate, in the absence of detailed submissions from the parties, to conduct a review of all 72 rules and make individual determinations as to each's validity.

I dismiss this portion of the tenants' application with leave to reapply.

5. Are the parties entitled to recover their filing fees?

The landlord was successful in his application for a monetary order. However, I found that the need for such a monetary order was due to his refusal to accept VL's rent payments when they were offered. Accordingly, I decline to order that the tenants reimburse him the filing fee.

The tenants have been mostly successful in their applications. Accordingly, they are entitled to recover the cost the filing fees for two of their applications. They may deduct $200 from the amount I ordered VL pay the landlord.

Conclusion

I order tenant VL to pay the landlord $2,053.50 by August 31, 2023, representing unpaid rent, less $200 for their filing fees.

I order the 10 Day Notice and the One Month Notice cancelled.

The 2022 Agreement is rescinded. The 2010 Agreement is the governing tenancy agreement.

ES may reside on the Site as an occupant.

I dismiss the tenants' application for an order that the landlord stop enforcing the park rules or for an order that the park rules are invalid, 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 *Residential Tenancy Act*.

Dated: May 14, 2023

Residential Tenancy Branch