

DECISION

Introduction

This hearing dealt with the Tenant(s)' December 11, 2024, Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- Cancellation of the Landlord's One Month Notice to End Tenancy for Cause under section 40 of the *Act*.
- Authorization to recover the filing fee for this application from the Landlord under section 65 of the *Act*.

NS and JDNS attended the hearing for the Applicants. Respondent's agents, GN and FN, attended the hearing for the Respondent.

Service of Records

The Applicants submitted a Canada Post Customer Receipt bearing a tracking number (copied on the cover page of my decision) and a destination postal code to prove service of the Proceeding Package to the Landlord by registered mail, mailed on December 17, 2024.

At the hearing, FN acknowledged receipt of the Applicant's Proceeding Package and testified that the Applicants did not include any additional records in their registered package.

On December 30, 2024, the Applicants submitted two records to the Branch: a picture showing the outside grounds of the Rental Unit (I have defined the term "Rental Unit" on the cover page of my decision) and a picture showing approximately 50% of the first page of what appears to be an insurance document, dated June 7, 2024 (this hearing took place on January 15, 2025).

As neither of the above two unserved records are "new and relevant evidence" for the purposes of Rule 3.17 of the Residential Tenancy Branch's (the **Branch**) *Rules of Procedure*, in making my decision I have not relied on either record. All records served to the Branch to be relied on at a dispute resolution proceeding must be served to the other party (see Rule 3.1 of the Branch's *Rules of Procedure*).

FN testified that they served the Landlord's records to the Applicants by attending the Rental Unit on January 2, 2025, and attaching a copy of the Landlord's records to the

Rental Unit's door. NS acknowledged receipt of the Landlord's records served in accordance with section 81 of the Act.

This hearing went ahead as scheduled.

Issues to be Decided

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

Are the Applicants entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

I have reviewed all admitted evidence, including the testimony of the parties, but I will refer only to what I find relevant to my decision.

FN testified that the Landlord only has an agreement with NS and testified that anyone else occupying the Rental Unit, including applicants JDNS and JHS are mere occupants.

The parties agreed that on December 3, 2024, the Landlord's agents served the Applicants with two almost identical one-month notices to end tenancy for cause, both signed and dated by GN on December 3, 2024, and both effective on January 31, 2025 (collectively referred to in my decision as the **One Month Notices**).

In their application, the Applicants stated that the Landlord's agent(s) attached copies of the One Month Notices to the Rental Unit's door.

FN testified that the reason why they served two notices was that they were unsure how to name the applicants on page one of each respective eviction notice, so they completed two different notices. The first eviction notice is to the following parties: NS, and "add. occupants [JDNS and JHS]", who are identified by the Landlord as "children 18, 15 at the time of TA in 214". The second eviction notice is to the occupants of the Rental Unit, DNS and JHS.

On page two of the One Month Notices, the Landlord's agent(s) have taken an "all of the above approach" and selected nearly every ground enumerated under section 40 of the Act as cause to end this tenancy. The Landlord's agent(s) completed the "Details of the Event(s)" section of the One Month Notices.

The Landlord submitted a copy of a tenancy agreement signed by NS and an agent of the Landlord on June 25, 2014 (the **Tenancy Agreement**). On page one of the Tenancy Agreement, only NS is listed as a tenant.

In the Tenancy Agreement, the “rented premises” is described as a “pad” and a “Site”. At the hearing, the parties agreed that the Landlord does not own the manufactured home which is situated on the manufactured home site being rented from the Landlord, and which I have defined as the “Rental Unit” on the cover page of my decision.

The parties agreed that rent is due on the first day of every month.

NS testified that JDNS and JHS are their adult children, and all three parties are currently residing in the manufactured home on the Rental Unit.

At the hearing, FN referred to copies of several different warning letters issued to the Applicants for various grievances, all of which I reviewed prior to making my decision. The foregoing letters are dated April 10, 2024, October 21, 2024, October 29, 2024, December 27, 2024 (collectively, the **Warning Letters**).

At the hearing, I informed the Landlord’s agents that each of the numerous grounds marked by the Landlord’s agents on page two of the One Month Notices is a ground to end the tenancy and provided them the opportunity to provide submissions and evidence with respect to each specific ground. Notwithstanding the foregoing, the Landlord’s agents mostly provided general submissions regarding the various grievances they have had with the Applicants, and they generally failed to provide submissions with reference to specific grounds (unless directed to do so by me).

I will outline the Landlord’s agents’ testimonies, along with the Applicants’ responses, with respect to each ground to end tenancy, under the “Analysis” section of my decision, below.

Analysis

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

Section 40 of the *Act* states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 40 of the *Act* states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the eviction notice.

The parties agreed that the One Month Notices were served to the Applicants on December 3, 2024. This application was filed, in time, by NS on December 11, 2024. Consequently, the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notices.

The parties agreed that in May 2024 the Landlord served the Applicants with the latest version of the park rules, a copy of which was submitted as evidence by the Landlord and marked as version "07/2021"(the **Park Rules**).

GN testified that the monthly rent for this tenancy is paid by NS with monthly cheques mailed to the Landlord.

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park

Section "3. Rent:" of the Tenancy Agreement provides the following: "only a maximum of 03 persons occupying the Site;".

In the One Month Notices, the Landlord's agents identified three individuals occupying the Rental Unit. At the hearing, FN appeared to be arguing that, along with the Applicants, a fourth party may be residing in the Rental Unit. The Applicants opposed the Landlord's agents' testimony regarding the number of occupants. The Landlord failed to provide sufficient additional evidence to overcome this deadlock and for that reason I would have to dismiss this ground.

However, more importantly, it is insufficient to rely on a potentially unconscionable term in the Tenancy Agreement to argue that the Landlord has ground to end this tenancy, because there are an "unreasonable number of occupants" in the Rental Unit. The Landlord's agents did not provide any justification for why four individuals residing in the Rental Unit would be unreasonable, but three would be reasonable (in accordance with section "3." of the Tenancy Agreement).

In any case, the Landlord has not proven, on a balance of probabilities, that anyone other than the Applicants are residing in the Rental Unit. Three individuals are a reasonable number of occupants.

- Tenants are repeatedly late paying rent.

The Landlord's agents cited late payments in 2007 and 2008. The Landlord cannot have it both ways: either this tenancy began in 2014 or in the mid-2000s. If this tenancy began in 2014, as they argued at the hearing and as it is suggested by the Tenancy Agreement, it is unclear to me why they are citing late payments of rent in the mid-2000s.

More importantly, I refer the Landlord's agents to the Branch's Policy Guideline 38, which states:

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

I find the Landlord cannot rely on late payments that occurred as part of another tenancy agreement. In the alternative, I find the Landlord failed to act in a timely manner and waived reliance on this provision. In the further alternative, the Landlord's agents did not provide at least three examples of late payments, which are the absolute minimum number sufficient to justify a notice under these provisions.

For all the above reasons, I find the Landlord failed to prove this ground to end the tenancy.

- Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

In the Landlord's December 27, 2024, warning letter, I can see the following statement: "Father [NS] has moved out of the park years ago without informing the park, and therefore leaving the MH to his 2 female Children, which are OCCUPANTS to the TA but not tenants, the park is of the opinion that this creates sort of Sublease, which is not permitted on this private property".

At the hearing, NS testified that they are still residing at the Rental Unit and identified their truck in the pictures submitted by the Landlord's agents. NS also testified that their two sons are residing at the Rental Unit, both of whom were identified by the Landlord's agents in the One Month Notices.

The Landlord's agents fell far short of proving that NS has moved out of the Rental Unit, considering NS' opposing testimony and the presence of NS' truck by the Rental Unit (as apparent by the Landlord's own pictures). The Landlord did not provide additional evidence to overcome their onus to prove that NS has moved out of the Rental Unit.

In addition, the Landlord's agents have not proven that anyone other than NS' two children are residing in the Rental Unit. The presence of third parties at the Rental Unit, alongside NS' children, is not ipso facto proof that the Rental Unit has been sublet to third parties.

The Landlord failed to establish an unlawful subletting. The Landlord's agents are encouraged to review the Branch's Policy Guideline 19 on assignments and subleases.

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

At the hearing, I directed FN to explain which terms of the tenancy agreement this ground is in reference to. After spending some time to review the Tenancy Agreement, FN identified several clauses, including clause "3." with respect to the number of occupants, clause "10.", which includes subclauses "a)" through "m" and is nearly one page in length, and clause "13.", which is in reference to subletting.

I have already found that the Landlord has not established that the Applicants are subletting the Rental Unit. I also find the Landlord has not established that the Applicants are in contravention of term "3." with respect to the number of occupants in the Rental Unit or that NS has invited "additional occupants" to the Rental Unit (individuals other than NS' children). Even if the Landlords had established the existence of additional occupants (not mere guests), the Landlord's agents still bear the onus to prove why this clause is a material clause of the Tenancy Agreement. Therefore, in the alternative, I find FN failed to provide evidence for why the Landlord considers this clause to be a material clause of the Tenancy Agreement.

Branch's Policy Guideline 8, with respect to material terms, provides that:

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 arbitrator will consider 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.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the arbitrator will consider the true intention of the parties in determining whether or not the clause is material.

As with their One Month Notices, the Landlord took an "all of the above approach" with respect to what they consider to be a material term of the Tenancy Agreement.

Clause "10." of the Tenancy Agreement is nearly one page in length and it is divided into 13 subclauses that refer to different responsibilities and obligations. The opening sentence of clause "10." identifies the entire clause as a material term of the tenancy. I cannot see the parties' initials beside the heading of clause "10." or beside any of its subclauses. However, as with every other page of the Tenancy Agreement, the parties have placed their initials at the bottom of page "6 of 10", the page on which clause "10." is printed on.

As stated under PG8, consequences of breach are immaterial under this ground. What matters is whether the parties, at the start of tenancy, agreed that the clause is so important that even the most trivial breach of the clause gives the other party the right to end the agreement.

As stated under PG8, warning letters regarding any breaches must not only outline the problem, but they must also inform the recipient that the purported breach is a breach of a material term of the agreement.

I have reviewed the Warning Letters. None of the Warning Letters identify clause “10.” of the Tenancy Agreement directly.

It is insufficient for a party to attend a hearing and rely solely on a sentence written in a tenancy agreement that identifies a particular clause as material. Clause “10.” was not initialed by the parties at the start of the tenancy and there is no evidence before me that the parties treated clause “10.” any different than any other clause in the Tenancy Agreement. Clause “10.” was not identified or highlighted in the Landlord’s Warning Letters. The Landlord’s agents did not provide an explanation for why they consider clauses “3.”, “10.”, and “13.” to be material clauses of the Tenancy Agreement. Even the Landlord’s One Month Notices do not identify clause “10.” as a material clause. Finally, and perhaps most importantly, clause “10.” is so far reaching that a finding of materiality would mean that everything from the wasting of water (subclause “e”) to strict compliance with all Park Rules (clause “g”)) would be a material clause of the Tenancy Agreement.

For all the above reasons, I find the Landlord failed to establish that they have ground to end the tenancy under this ground.

- Tenant knowingly gave false information to [a] prospective tenant or purchaser of the rental unit/site or property/park.

The Landlord’s agents did not provide evidence in relation to this ground. When I asked FN why they selected this ground, FN testified that the Landlord has a no subletting rule and NS has moved out of the Rental Unit.

It appears that the Landlord’s agents did not read the box they selected. The Landlord did not identify the “prospective tenant or purchaser of...”; consequently, I find the Landlord failed to establish that they have a valid reason to end the tenancy under this ground.

- 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.
- Tenant or a person permitted on the property by the tenant has put the landlord’s property at significant risk.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- Tenant has not done required repairs of damage to the unit/site/property/park.

The bulk of the Landlord’s grievances are in relation to the above grounds.

FN testified that the Applicants are conducting major repairs on a vehicle by removing the vehicle’s engine. FN testified that in accordance with the Park Rules, major repairs to vehicles are not allowed.

FN testified that, as is visible in the Landlord's submitted pictures, the Applicants' vehicles are leaking fluids which the Applicants are refusing to remedy.

In their October 21, 2024, letter, the Landlord's agents cite clause "18." of the Park Rules regarding mechanical work on vehicles and demand that the Applicants cease all mechanical work on parked vehicles and to clean up any fluid discharge in the Rental Unit's driveway.

The Landlord's October 29, 2024, warning letter references multiple other grievances. In this letter, GN writes that while delivering a previous warning letter regarding mechanical work on the grounds of the Rental Unit, an occupant in the Rental Unit disrespected management by stating "Fuck You" to the "landlord's representatives". In the letter, GN further states that the Applicants are in contravention of the park's three car limit and three-occupant limit. GN further states that the Applicants have failed to remove illegal plants and substances (which claim I will address in a different section of my decision), provide identification cards for all occupants of the Rental Unit, proof of "street registration of all vehicles on this private property", and proof of fire insurance.

At the hearing, with respect to the argument between the Landlord's agent(s) and one of the occupants in the Rental Unit, FN testified that the Landlord's agent(s) attended the Rental Unit to discuss the Applicants' vehicles, but a "young gentleman" in the Rental Unit told the Landlord's agent(s) that "the car is not going anywhere" and then began using crude and insulting language.

In response, NS testified that there are only three cars parked on the grounds of the Rental Unit and they are waiting for water in the park to be re-connected so they can clean the driveway (NS provided unopposed testimony that water which could be used to wash the driveway was disconnected in October 2024 and it will not be reconnected until April 2025).

JDNS identified the "young gentleman" as themselves and testified that they discovered the Landlord's agents "touching" and taking pictures of their brother's vehicle on the date of the incident, which prompted their reaction. JDNS testified that they informed the Landlord's agent(s) that they do "not have a lot of money right now" to remove the vehicle that is not in working order, but the agent had no desire to listen or to entertain JDNS, which angered JDNS and in response JDNS said "Fuck You" repeatedly.

JDNS agreed that they were rude, but they denied yelling and being aggressive.

JDNS testified that they do not understand why the Landlord's agents are seeking their photo identification when they are fully aware of all the Applicants' legal names.

FN testified that NS' current or former spouse is residing at the Rental Unit, which was opposed by the Applicants. NS testified that they divorced their spouse in 2019.

I reviewed the Landlord's submitted pictures at the hearing and identified at least five different vehicles parked near the Rental Unit: a red car, a silver VW with a cover on it, a white truck, a black truck, and a small grey hatchback. It is important to note that none of the Landlord's pictures show all five vehicles parked near the Rental Unit at the same time. In many of the Landlord's pictures, I can only see one vehicle parked near the Rental Unit. In others, I can see three.

NS testified that the Applicants disposed of the red car one month prior to the hearing date, and it is no longer parked in their driveway. FN testified that they visited the Rental Unit on January 2, 2024, and they do not recall seeing the red car on that date.

JDNS testified that the VW with the cover on it belongs to their brother JHS and it is the vehicle that JHS was working on. JDNS testified that as soon as the Landlord asked them to stop working on the vehicle, they complied and stopped working on the vehicle. I note that in all the pictures submitted by the Landlord's agents, the silver VW is under a protective cover, but in some of the pictures I can see signs that the vehicle was being worked on previously (for example, I can see at least one spare tire near the vehicle, the engine of the vehicle is placed on the ground behind the vehicle, and there are tools near the vehicle).

JDNS testified that the only reason they have not disposed of the silver VW at this time is that they do not have money to pay for storage.

JDNS testified that the small grey hatchback does not belong to the Applicants or any occupants of the Rental Unit. JDNS testified that the hatchback belongs to their friend and it is parked in front of the Rental Unit when he comes to visit them.

JDNS identified the white truck as their brother's vehicle. NS testified that the black truck is theirs.

NS testified that they do have fire insurance on the Rental Unit and that they sent proof of insurance to the Landlord. FN denied receiving anything from the Applicants.

In the Landlord's pictures, I can see obvious signs of chemical discharge flowing from the silver VW; consequently, the Landlord's concerns are valid. However, the Rental Unit's driveway is generally in good upkeep.

This is a case where the Landlord's agent(s) are clearly fed up with the Applicant's nonchalant attitude towards their tenancy. However, the legislation uses strong wording, like "significantly," "unreasonably," and "seriously," to ensure that a landlord can only end the tenancy if the conduct in issue meets the above criteria.

As stated in the Branch's Policy Guideline 55, the word "seriously" indicates that the risk is substantial; it is not minor or trivial.

I do not find JDNS' immature behaviour to have seriously jeopardized the lawful right or interest of the Landlord or to have put the landlord's property at significant risk, considering the context provided by the parties at the hearing. However, with respect to the substance of the Landlord's complaint, that is, with respect to the parked vehicle that was clearly being worked on at some point during this tenancy (in contravention of the Park Rules), I also find the Landlord has not proven that the vehicle poses a significant risk to the Landlord's property or that, by working on the vehicle, the Applicants seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Contravention of the Park Rules with respect to the number of vehicles is not a serious jeopardy to the health or safety or lawful right of another occupant or the landlord and it is not a significant risk to the Landlord's property.

Repeated contraventions and breaches of the Park Rules, the Tenancy Agreement and civil norms can be a basis for eviction under the following ground: tenant significantly interfered with or unreasonably disturbed another occupant or the landlord; however, the Landlord in this case did not select this ground as one of the many grounds for ending the tenancy.

I must therefore decide whether having more than three vehicles is tantamount to a significant risk or a serious jeopardy, which I have found it is not. In addition, I do not find the oily discharge under the parked vehicle to be a significant risk or a serious jeopardy warranting an eviction at this time. If there are procedures in place at the park, the Landlord may take the necessary actions and pass on the costs to the Tenant(s) or the Landlord may serve the Tenant with an eviction notice under the ground I mentioned above.

Based on the evidence before me and the testimony of the parties, I find that not providing identification more than a decade into the tenancy, or proof of registration/insurance are not significant risks to the Landlord's property or a serious jeopardy to the health or lawful right of another occupant or the Landlord.

The Applicants are warned that multiple and continual breaches of the Tenancy Agreement and the Park Rules, even when not breaches of a material term, may constitute a ground for eviction under section 40(1)(c)(i), which is a ground that was not selected by the Landlord in this case. The Applicants are warned that the Landlord may provide them with additional eviction notices if contraventions and breaches continue.

At this time, I find the Landlord has failed to prove they have a valid reason to end the tenancy under the four grounds I identified in the subheading for this section of my decision.

- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to damage the landlord's property.

- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

At the hearing, the Landlord's agents referred to the Applicants' "marijuana plants" and testified that it is not easy to prove how many plants the Applicants have. In response, NS testified that they do indeed have marijuana plants, but their actions are entirely legal.

The Branch's Policy Guideline 32 states that the term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property

PG32 further provides that the party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the *Rules of Procedure*, a legible copy of the relevant statute or bylaw.

Irrespective of the number of marijuana plants at the grounds of the Rental Unit, the Landlord did not provide copies of relevant statutes and/or bylaws establishing the law with respect to marijuana plants.

The Landlord failed to establish the validity of the One Month Notices under this ground.

Therefore, the application is granted for cancellation of the Landlord's One Month Notices under section 40 of the *Act*.

The One Month Notices dated December 3, 2024, are cancelled and are of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 65 of the *Act*, **to be collected from the Landlord by withholding \$100.00 from their next monthly rent payment (pursuant to section 65(2) of the Act)**.

Conclusion

The Tenant's application is granted for cancellation of the Landlord's One Month Notices, dated December 3, 2024, under section 40 of the *Act*.

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 65 of the *Act*, **to be collected from the Landlord by withholding \$100.00 from their next monthly rent payment (pursuant to section 65(2) of the Act).**

The Tenant/Applicants are warned that repeated violations of the Tenancy Agreement and Park Rules may result in future eviction notices and, possibly, an eviction.

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: January 22, 2025