

DECISION

Dispute Codes ET FF

Introduction

This is the Landlord's application for an early end of tenancy; an Order of Possession; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided by the Landlord prior to the Hearing. The Landlord's agent and the Tenant gave affirmed testimony and this matter proceeded on its merits.

Issue(s) to be Decided

- (1) Should the tenancy end pursuant to the provisions of Section 49 of the *Manufactured Home Park Tenancy Act* (the "Act");
- (2) Is the Landlord entitled to recover the cost of its filing fee from the Tenant?

Background and Evidence

The Landlord's agent CB testified that he personally served the Tenant with the Notice of Hearing documents and evidence on January 25, 2010 at 12:50 p.m. at the Tenant's residence. The Tenant stated that he did not receive copies of the Landlord's evidence. The Landlord's agent DH testified that he witnessed the service of the documents upon the Tenant.

The Landlord's agent testified that the Tenant had sublet his home, contrary to park rules, and was repeatedly late paying rent. Furthermore, the Tenant was taken away by the police on January 17, 2010 at approximately 2:00 p.m. for trespassing on another

tenant's property and assaulting the other tenant. Landlord's agent testified that the other tenant is a young man, aged 18, who had a broken wrist at the time of the assault.

The Tenant testified that he was on medication for a hernia and had surgery the following day to correct the problem. He stated that he was petting the other tenant's cat, which was sitting on top of the other tenant's car on the other tenant's property. The Tenant testified that the other tenant yelled at him to get off his property. The Tenant stated that he left the other tenant's property, but the other tenant followed him across the road and choked him. The Tenant testified that he has not been criminally charged with assault as a result of the altercation.

The Landlord provided a petition in evidence, signed by 13 other tenants in the manufactured home park. The petitioners write that the Tenant has, on numerous occasions, threatened residents of the mobile home park with bodily harm. The petitioners write that the Tenant has been seen stumbling around, under the influence of drugs and alcohol, carrying a hammer and a home-made baseball bat. The petition asks the Landlord to evict the Tenant from the park because he is a danger to other residents. The petitioners submit that they do not feel safe with the Tenant living there.

The Tenant testified that he makes and sells baseball bats. He stated that he uses a hammer for work purposes and carries it to and from his home with him. The Tenant denies ever threatening anyone.

The Landlord's witness testified that people allowed on the Tenant's property by the Tenant had destroyed his rock garden by driving over his property with a motor home. He testified that the Tenant had a chimney fire in December and slept right through it. The witness testified that if it weren't for his quick action in putting out the fire, there could have been loss of property and life.

The Tenant stated that he would fix the rockery for the witness. He stated that he did not remember much about the chimney fire because he had taken some medication and slept through it.

The Landlord's agent testified that on January 12, 2010, he served the Tenant with a Notice to End Tenancy for Cause.

Analysis

Section 49 of the Act states:

Application for order ending tenancy early

- 49** (1) A landlord may make an application for dispute resolution to request an order
- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 40 [*landlord's notice: cause*], and
 - (b) granting the landlord an order of possession in respect of the manufactured home site.
- (2) The director may make an order specifying the date on which the tenancy ends and the effective date of the order of possession only if satisfied that
- (a) the tenant or a person permitted in the manufactured home park by the tenant has done any of the following:
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
 - (iii) put the landlord's property at significant risk;
 - (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,
 - (B) 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, or
(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the manufactured home park, and

(b) 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 under section 40 [*landlord's notice: cause*] to take effect.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

I do not find infraction of park rules and non-payment of rent to be sufficient cause to end the tenancy under Section 49 of the Act.

I accept the Landlord's agents' testimony that the Tenant was served with the evidence, including the petition of the other tenants.

The Landlord's agent stated that the other tenant had a broken wrist at the time of the incident on January 17, 2010. The Tenant stated that he had a hernia and was under the influence of medication. There was no documentary evidence to support either claim, however neither party disputed the other's testimony. The Tenant testified that the other tenant choked him. Under these circumstances, it would have been difficult for either party to fight aggressively with the other, however, the Tenant admitted that it was he who was taken away by the police, and not the other tenant. The Police decided to remove the Tenant from the premises, whether or not criminal charges were laid.

In answer to the petitioner's allegation that the Tenant was threatening them and walking around with a hammer and a baseball bat, the Tenant testified that he never threatened anyone. He also stated that the hammer was for work purposes and that he made and sold hand-made baseball bats. It is not specifically stated in the petitioner's

document as to the Tenant's demeanour while he was stumbling around, but I question why the petitioners would have felt threatened by the Tenant merely walking around the park with these items in hand.

Based on the testimony of both parties and the documentary evidence of the Landlord, I find, on the balance of probabilities, that the Tenant has significantly interfered with or unreasonably disturbed other occupants of the manufactured home park. I further find that this behaviour has escalated since the Tenant was served with a Notice to End Tenancy for Cause on January 12, 2010, and therefore 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 under section 40 [*landlord's notice: cause*] to take effect.

I find that the Landlord is entitled to end the tenancy early, and provide the Landlord with an Order of Possession, effective two days from service of the Order upon the Tenant.

The Landlord has been successful in its application and is entitled to recover the cost of the filing fee from the Tenant.

Conclusion

I grant the Landlord an Order of Possession **effective two days from service of the Order**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court

I grant the Landlord a Monetary Order in the amount of \$50.00 against the Tenant. This Order must be served on the Tenant and may be filed in the Provincial Court of British

Columbia (Small Claims) and enforced as an Order of that Court

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufacture Home Park Tenancy Act*.

January 29, 2010

Date of Decision
