



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This application was brought by landlord on February 13, 2012 seeking an Order of Possession to end the tenancy early under section 49 of the *Manufactured Home Park Tenancy Act*. This section permits such applications in situations where it would be unreasonable for the landlord to wait for an order under section 40 of the Act which requires a Notice to End Tenancy of a minimum of one month. Applications under section 49 are given the highest priority in scheduling hearings.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession under the requirements of section 49 of the *Act* and, if so, the effective date of such order.

Background and Evidence

This tenancy began in September of 2008.

The tenants and occupants in this dispute are four generations of females, who are referred to by their relationship to one another herein for clarity. The great grandmother (GGM) is the nominal tenant who does not live in the subject manufactured home park. She assisted her daughter, the grandmother (GM), who is the primary resident in the home, to purchase the unit. Her daughter, the nominal tenant's granddaughter (GD) is a sometime occupant as his her daughter, the great granddaughter, (GGD), a three-year old child. A central figure in this dispute is "J", boyfriend of the GD and father of the GGD who has been under a restraining order

Evidence was given during the hearing that the GD left the park in February 2011 under a negotiated agreement made to rescue the tenancy after a series of incidents of

disturbing other tenants. She stayed in an apartment until returning to the manufactured home park in December 2011. The landlord acknowledged that she had been advised that the GD was returning for a few days around X-Mas to celebrate the holiday season. However, she has remained in the rental unit to the time of the hearing and the previous problems have resurfaced.

Her mother, the GM, gave evidence that she brought her daughter back to the manufactured home temporarily when her daughter had fallen into a depression following the tragic death of a young friend. She further stated that the family has made application for treatment of alcohol addiction for the GD and they anticipate a two to three month residency program to commence shortly, and after completion, she will be moving to an apartment.

During the hearing, the landlord gave evidence that there have been ongoing complains of disturbances from the subject unit, but the incidents that instigated the application for an early end to the tenancy occurred during the early morning hours of February 8, 2012.

In that incident, five police cars attended the rental unit, arresting one visitor who had arrived in a stolen pickup truck.

The landlord submitted into evidence letters from three other tenants.

One dated February 7, 2012 described a pickup truck driving into the parking area around 12:45 a.m. and two occupants remained in it for ten to fifteen minutes until a second vehicle, a Cadillac, arrived. One of the pickup occupants approached the Cadillac and looked in the trunk. Shortly after, when police arrived, the passenger of the truck hid whatever was in the trunk of the back yard of the rental unit. According to the GM, the one of the vehicles had come to return a bicycle that had been borrowed by "J" and the other had come uninvited to share a birthday drink with her daughter.

A second undated letter described frequent disturbances emanating from the subject rental unit and police attendance on a number of occasions, and fear of "J."

A third letter described frequent disturbances in and around the subject unit including car doors closing, loud music, visitors opening the writers gate letting the dog out, and police attendance.

A fourth letter, dated Feb 7, 2012, reported late night noise, someone banging rocks together and throwing them into the writer's yard and frequent short stay visitors to the subject unit late at night.

The GM gave evidence that she believes "J" was arrested for breach of a "no contract" order on February 6, 2012 and that he is presently incarcerated.

The landlord made reference to disturbances by "J" including his having used a neighbour's patio furniture to climb through a window of the subject home at night.

Analysis

Section 49(2) of the *Act* provides that an Order of Possession to end a tenancy early may be issued if:

- (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;

Section 49(2)(A) provides for the order if such a person:

- iv) engaged in illegal activity that
 - (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...

While I do not have definitive evidence of illegal activity, I do find that persons permitted in the manufactured home park by the tenant have significantly interfered with or unreasonably disturbed another occupant or the landlord.

Given that the tenant and the primary occupant are not themselves accused of disturbing conduct, this at first appeared to be a matter best addressed through a Notice to End Tenancy for cause under section 40 of the *Act*.

However, the landlord submits that it would be unreasonable for her to have to wait for the one-month notice and rescheduling in view of three considerations:

- The landlord entered into protracted negotiations with the tenant in 2010 to come to the agreement that she would not proceed under a Notice to End Tenancy for cause if the GD were to voluntarily leave the park as she did, but the agreement was breached when she overstayed the brief X-Mas visit;
- The conduct that led to the initial Notice to End Tenancy appears to have worsened and the GGM and GM appear unable to control the GD and “J;”
- There is a fear shared by the landlord and other tenants that if the GD remains, then “J” and other friends of the GD will continue to frequent the park.

In an effort to once again avoid dispossessing the GGM and the GM over the conduct of others, the landlord agreed to accept a conditional Order of Possession, and gives her solemn promise that she will not enforce the order if:

1. “J” does not return to the property
2. The GD vacates the manufactured home no later than February 9, 2012;
3. There are no further incidents of major disturbances requiring police attendance.

Under those restrictions, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on March 31, 2012.

I would caution the landlord that the mere attendance of a police car would not be sufficient to activate the order. The landlord must be satisfied that the police attendance was to attend to a real and significant disturbance.

In addition, I caution the tenant that if “J” were to appear on the property, she would be expected to advise that he is not welcome and to report his presence to the police.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession – enforcement of which is contingent on conditions set out in this decision - enforceable through the Supreme Court of British Columbia, effective at 1 p.m. on March 31, 2012.

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

Dated: February 23, 2012.

Residential Tenancy Branch