



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parkbridge Lifestyle Communities Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

This hearing dealt with an application by the landlord seeking an Early End of Tenancy and for an order of possession. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Preliminary Matter: Service of Respondent's Evidence

The tenants counsel had submitted documentary evidence to dispute the landlord's claims. However, the landlords' agent stated that the evidence was not received by the landlord and their agent until the morning of the hearing. The tenants counsel stated that he had faxed the documentation at 1:30 p.m. the day prior to the hearing to the Residential Tenancy Branch and to the landlord.

The Residential Tenancy Rules of Procedure, Rule 3.1, requires that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding. If the respondent intends to dispute an Application for Dispute Resolution, Rule 4 states that copies of all available documents, photographs, video or audio tape evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding but if the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

I note that the Landlord and Tenant Fact Sheet contained in the hearing package makes it clear that "*copies of all evidence from both the applicant and the respondent*

and/or written notice of evidence must be served on each other and received by RTB as soon as possible..”

Given the above, I declined to accept or consider any evidence that was not properly served on the other party. However, verbal testimony from both parties and the documentation of the landlords which was submitted in accordance with the Act was considered in making a decision.

Issues to be Decided

Is the landlord entitled to have the tenancy end early and to an order of possession?

Background and Evidence

The tenancy began on or about June 1, 2007. The tenant owns the manufactured home but rents the pad where the home sits from the subject landlord. The landlord filed an application with the Residential Tenancy Branch on September 23, 2013 seeking to have the tenancy end early and to obtain an order of possession.

The landlords' agent and witnesses gave the following testimony:

The landlords' agent had four witnesses appear on behalf of the landlord. The witnesses will be referred to by the sequence that they provided testimony.

Witness #1 gave the following testimony:

The witness stated that she was previously employed by the subject landlord as the manager from October 2008- December 2012. The witness stated that she had several verbal altercations with the male tenant; one that required the attendance of the police. The witness stated that she felt physically threatened to her person, her home and to her family. The witness stated that during one altercation with the subject tenant he had made what she believed to be a threat and she asked him “is that a threat?”, she states the tenant replied “that’s a promise”. The witness stated that the male tenant said “if you don’t leave me alone we’ll go before the judge, I know how this works”. The witness stated that she felt threatened by his actions and his words.

Witness # 2 gave the following testimony:

The witness stated that she has been employed by the subject landlord since May 17, 2013. The witness stated that she had one verbal exchange with the male tenant on August 2, 2013 in regards to him illegally parking his motor home. The witness stated that she had placed a warning notice on his vehicle and that this upset the male tenant. The witness stated the male tenant attended at the office and was yelling, was agitated, and spoke to her in a threatening manner. The witness stated that the male tenant warned her to leave him alone or he would have her fired like he did the previous manager. The witness stated that it became so heated that the police were called and attended.

Witness #3 gave the following testimony:

The witness stated that on the morning of September 19, 2013 he was out walking his dog when the male tenant stated "so are you going to call them and complain about my camper?" The witness stated that "if you want me to call I will". The witness stated that the male tenant called him a '(expletive) queer rat and I'm gonna (expletive) come in your house and shoot you and your idiot friend". The witness stated that he walked away and called the police. The witness stated the police attended and placed the male tenant on conditions; one of which is to have no contact with the witness. The witness stated that he felt his safety was threatened and especially to his roommate that is sick with cancer.

Witness # 4 gave the following testimony:

The witness stated that about two years ago he had heard that the male tenant had made a threat to a couple that lived in the park that were in their 90's. The witness stated that he heard the male tenant was bragging about his exploits with the older couple. The witness stated that the wife of the older couple told him that the male subject tenant had threatened "to beat the (expletive) out of them.

The male tenant gave the following testimony:

The tenant stated that he was given permission to park his camper on the main roadways in the park 24 hours prior to using it and 24 hours after using it. The tenant stated that all of the issues have arisen due to the staff not being informed of his authorization to park his camper in the park. The tenant stated that he does not block any other driveways other than his own. The tenant stated that he adamantly disputes the version of events of each of the witnesses. The tenant stated that he has worked with the law for 27 years in this province in a private security firm. The tenant stated that he uses the law not abuses it. The tenant stated that he was the driving force for the block watch program in this park and to have security cameras installed; some at his own expense. The tenant stated that he had no intention of harming anyone but became a little emotional in dealing with the issue of his camper over and over.

The female tenant gave the following testimony:

The female tenant stated she had no issues with anyone in the park.

The agent for the landlord submissions and argument:

The agent stated that on behalf of the landlords that they have serious concerns about the male tenants' behaviour. The agent stated the landlords are concerned about the ongoing and escalating pattern of harassing, aggressive and criminal behaviour. The agent stated that the landlords are attempting to make the park a safe and peaceful place for others to live and to allow their employees to work without being harassed or threatened. The agent stated that the male tenants' behaviour has reached a point where the police have issued a "no contact order" between the male tenant and one of the park residents. The agent stated that the landlords seek to have the tenancy end early and to obtain an order of possession.

Counsel for the tenants submissions and argument:

Counsel for the tenants submitted that the issue of tenancy could be and should be addressed through a One Month Notice for Cause and not an Early End of Tenancy application. Counsel stated that the landlords have chosen this option to minimize and restrict the tenants' ability to provide sufficient and appropriate evidence to defend himself for this hearing.

Counsel cross examined all witnesses and submitted the following:

Although the first two witnesses said they felt threatened in their dealings with the male tenant, neither of them gave testimony that the tenant made an actual threat on their physical well being. Counsel submitted that the even though the third witness has made a complaint to the police and that a "no contact order" was issued the male tenant has yet to be formally charged and must be presumed innocent. The tenant has been placed on police issued conditions and to date has yet to go before a judge or justice as no formal charges have been laid.

Counsel submitted that the fourth witness was unable to identify the male tenant and did not even know his name. Counsel submitted that the fourth witness was not present at the alleged verbal threats to the elderly couple and that the matter was dated and irrelevant. Counsel submitted that there is no pattern or criminal behaviour or any clear threats made at anytime. Counsel stated that based on the very general information brought forward by the landlords this application should be dismissed and that the landlord should address the issue of tenancy by way of One Month Notice to End Tenancy for Cause.

Analysis

In making an application for an early end to this tenancy the landlord has the burden of proving that there is cause for ending the tenancy, such as unreasonably disturbing other occupants, seriously jeopardizing the health and safety or lawful right or interest of the landlord and placing the landlords property at risk, **and** by proving that it would be

unreasonable or unfair to the landlord or other occupants to wait for a One Month Notice To End Tenancy for Cause under Section 40 of the Act to take effect.

It is apparent from the testimony of the landlords' employees and that of that of a park resident that there are issues between the tenant and the landlord. Section 49 of the Act uses language which is strongly written and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with.

Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk or that it's **unfair** to the landlord or other occupants to wait for a Notice to End Tenancy.

The agent for the landlords stated that the tenant has an ongoing criminal pattern. I do not agree with this characterization. The tenant had a disagreement with an employee in August however that does not qualify it as criminal behaviour. I do not see this as a pattern or spree of criminal activity. Counsel for the tenant submitted that there has been no issue since September 19, 2013, a point which the landlords did not dispute. I agree with Counsel for the tenants' submission that the tenant is not an immediate threat to the residents of the park or the staff. The police have issued "no contact" conditions to address any issues pending a full investigation and whether formal charges are to be laid. Based on all of the above and on the balance of probabilities, the landlord has failed to prove that that it would be unfair to the landlords or other occupants to wait for a Notice to End Tenancy.

Conclusion

The landlords' application is dismissed. The tenancy remains in full effect.

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: October 12, 2013

Residential Tenancy Branch

