



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Manufactured Home Park Tenancy Act* (the Act) for orders as follows:

1. To cancel a Notice to End Tenancy dated May 23, 2014 pursuant to Section 40 for cause; and
3. An order to recover the filing fee pursuant to Section 65.

SERVICE

I find that the tenant was properly served with the Notice to End Tenancy and the landlord with the Application for Dispute Resolution hearing package. The landlord also filed an Application but said she had not served it on the tenant as she understood that if the tenant was unsuccessful in their Application, she would be able to obtain an Order of Possession.

Issues to be Decided:

Has the landlord proved on the balance of probabilities that there is cause to end the tenancy and to obtain an Order of Possession if the tenant is unsuccessful; or is the tenant entitled to relief and to recover the filing fee for this application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The Notice to End Tenancy was a one month notice given for cause pursuant to section 40 of the Act. The landlord stated the causes were the tenants significantly interfering and unreasonably disturbing another occupant or the landlord, seriously jeopardizing the health or safety or lawful rights of another occupant and putting the landlord's property at significant risk.

This is a manufactured home park where the subject tenants have lived for 18 years. A few years ago, the tenant who has registered the complaints against these tenants moved into the park. The landlord continually expressed her upset and frustration in the hearing as she has been unable to handle the constant disputes between these tenants and this next door neighbour. She said the complainant tenant, R.M., is undergoing

treatment for serious medical issues and has problems with these tenants burning their wood stove irresponsibly and producing black smoke, calling the police to complain about him, making rude comments, cutting the grass continually to harass him with noise and deliberately piling extra snow on the side by his driveway. The complainant, R.M. attended and gave evidence and said he could have produced lots of other evidence as well but had not. The landlord said that she did not want to interview other tenants concerning these tenants as she did not want to disturb others.

The tenants agreed they burned a wood stove and also had an oil furnace. They said they needed to burn wood on the stove for the female tenant who is elderly and has medical issues and gets very cold. They denied burning noxious materials and claimed they had to have some windows open as this is part of the manufacturer's instructions; they included the instructions as evidence. They said they did not damper the fire to produce more smoke to annoy R.M. and the stove does not have a damper. They denied making extra noise with lawn cutting and said they cut the common property as well as their own property and had cared for it for years. The male tenant said R.M. threatened him by saying his behaviour "would not end well for them" and on the advice of a lawyer friend, he had called the Police about the threat and there was to be a hearing on a Peace Bond. R.M. said he was not uttering threats but he does talk to himself sometimes and he may have said something like that when frustrated. He provided a letter from one neighbour and a photo showing the female tenant crossing the back of another lot and patting his dog.

The tenants provided in evidence several letters from neighbours who live in the same park within a few minutes walk of their home. Each letter expressed support for these tenants and said that they did not disturb anyone's peaceful enjoyment and they were excellent tenants. Each party accused the other of using religious symbols to annoy. The landlord said she had attempted to mediate without success and she is concerned about the escalation of hostility which may have unfortunate results. She had drawn up a suggested agreement which neither party for their own reasons had signed. She said all the tenants are excellent in the way they care for their homes and in other ways but there is constant friction between them which causes her park manager and herself continual interference.

After further discussion, the parties agreed to abide by certain conditions in the agreement which are enumerated in my conclusion and order.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

As explained to the parties in the hearing, the landlord has the onus of proving that these tenants are significantly interfering with, and disturbing the peaceful enjoyment of other occupants or the landlord. These tenants have lived in the park for about 18 years and I find from the landlord's own statements and those of neighbours they are excellent tenants in many ways, taking care of their property and assuming care of many common areas. Apparently the complainant tenant, R.M., is also an excellent tenant and the situation between the adjoining tenants is like a war between people who have medical issues and are being severely stressed by the situation. However, I find insufficient evidence in the documents or oral evidence in the hearing to end the tenancy of these tenants. Although R.M. said he had further evidence, he did not produce it and I find the letters from other tenants in the park are persuasive concerning the normally peaceable behaviour of these tenants J.S. and M.S. Therefore, I decline to issue an Order of Possession as the evidence is insufficient.

Conclusion:

After discussion of the landlord's letter and attempts to mediate, the parties agreed to be bound by the following terms and requested I incorporate them in an Order. I will refer to the parties by initials for privacy reasons. J.S. and M.S. are the tenants who were the subject of the notice to end tenancy and R.M. was the complainant.

Therefore, I ORDER THAT:

- 1. The parties, R.M. and J.S. and M.S. will avoid contact either physically or verbally at all times.**
- 2. R.M., J.S. and M.S. will make every effort to stay out of each other's space both physically and visually and refrain from staring or taking photographs of each other.**
- 3. R.M., J.S. and M.S. will allow each other quiet, peaceful enjoyment of their homes and property.**
- 4. Any and all complaints will first be put in a letter to the owners of the park with full details and evidence to support the complaint; only complaints submitted this way will be considered legitimate by the owners.**
- 5. The burning of the wood stoves of the tenants will not be permitted between May 15 and October 15 each year and no burning of anything other than dry, clean wood is permitted as this pollutes the air and is contained in Park Rule B6.**
- 6. The tenants may mow the lawn only one day a week and the tenants J.S. and M.S. will no longer hold themselves responsible for mowing the common property.**

I caution all the tenants involved that breach of the above terms may result in an Order to End Tenancy on one or both and may result in an Order of Possession if the evidence is sufficient. This would have significant consequences for these tenants since all the tenants have medical issues and having to move their home from a manufactured home park would be stressful, onerous and expensive.

I dismiss the Application of the landlord as although filed, it was never served on the tenants. Both parties incurred filing fees and I find some justification and faults on each side. Awarding the fees to both parties results in them cancelling each other so no monetary order is issued for filing fees to either party.

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: July 09, 2014

Residential Tenancy Branch

