



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OLC, CNC, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking an order to force the landlord to comply with the Act or agreement. The tenant amended the application on September 30, 2014 to add a request to cancel a One-Month Notice to End Tenancy for Cause that was issued by the landlord on September 27, 2014.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

- Should the One-Month Notice to End Tenancy for Cause be cancelled?
- Should the landlord be ordered to comply with the Act and agreement?

Background and Evidence

Submitted into evidence was a copy of the One-Month Notice to End Tenancy for Cause, copies of communications, written witness statements, copies of banking email transfer printouts, a chronology of events from the landlord, video and photographic evidence, a map of the property layout and a copy of a receipt from a septic company dated April 9, 2014. August 25, 2010 indicating that the landlord was ending the tenancy because the tenant had significantly interfered with and or unreasonably disturbed other occupants or the landlord and seriously jeopardized the health, safety or lawful right of another occupant or the landlord. Also submitted into evidence by the landlord was a written statement and copies of communications and reports chronicling incidents that occurred during the tenancy.

The tenancy began approximately 10 years ago. The tenant resides in his own manufactured home located on the edge of the landlord's rural property and pays pad rent of \$375.00 per month, which also includes hydro.

The landlord testified that, due to the tenant's conduct, the landlord issued a One Month Notice to End Tenancy for Cause under Section 40(4) of the Manufactured Home Park Tenancy Act alleging that the tenant has:

- significantly interfered with and or unreasonably disturbed other occupants or the landlord or;
- seriously jeopardized the health, safety or lawful right of another occupant or the landlord, and.
- put the landlord's property at significant risk.

The landlord stated that the tenant's trailer is located in its own area separated from the rest of the farm. According to the landlord, there is no need for the tenant to be anywhere on the property that is occupied by the landlord and used for the landlord's business. The landlord testified that the tenant makes it a practice of walking around areas of the farm that are for the landlord's exclusive use. The landlord pointed out that the tenant apparently believes that most of the farm consists of "common areas" which the tenant feels are within his right to freely access as part of the tenancy.

The landlord stated that her section of the property is a riding stable that includes gated access driveways, fenced paddocks, a riding ring, a barn, a breezeway and her private residence, none of which are in any way related to the tenant or his tenancy. The landlord provided a map of the property identifying the various areas used for her farm, business and residence and showing the portion of the property where the tenant's trailer and driveway are located.

The landlord stated that, despite her repeated requests that the tenant cease this behavior, he refused to cooperate and, in fact became hostile on more than one occasion. The landlord testified that the tenant's hostility escalated and he made rude comments, used foul language, raised his voice and verbally challenged the landlord in an intimidating manner by approaching her and repeatedly yelling, "*What are you going to do about it?*" The landlord stated that, on one occasion the tenant stood by watching her riding class and was seen and heard spitting on the ground. The landlord testified that this conduct alarmed some of her clients.

The landlord stated that the tenant's behavior has been witnessed by others and made reference to written witness statements submitted into evidence.

The landlord stated that the tenant has insisted on video-taping her, knowing that she finds this unacceptable. The landlord stated that the tenant has also left containment gates open endangering the security of the horses and dogs. The landlord testified that she is fearful of the tenant and finally found it necessary to involve the police. The landlord pointed out that she has even pursued a legal “*no contact order*”.

The landlord feels that the One Month Notice to End Tenancy for Cause is valid and should not be cancelled. The landlord asks that the tenant’s application be dismissed and an Order of Possession be issued in favour of the landlord.

The tenant stated that, although there is no written tenancy agreement that contains a specific term permitting him to utilize the farm as a “common area”, he and other tenants have always had access to most of the farm. The tenant testified that, until recently, accessing the property has never been raised as an issue and, in fact he has assisted with repairs and maintenance on the farm in the past.

The tenant pointed out that he has been walking on the property, for health reasons, over an extended period of time, and feels that this fact proves that the right to access is part of the tenancy terms. The tenant testified that this controversy over him taking his walks on the property arose only after he had a dispute with the landlord over her failure to address his complaint about problems with his septic tank. The tenant believes that the landlord has intentionally contravened the terms of the tenancy in reprisal for the tenant’s action in asking for repairs.

The tenant denied the allegations of aggressive conduct and stated that he would never threaten anyone. The tenant pointed out that the landlord was purposely harassing him by coming onto his site without written notice, repeatedly threatening to evict him, forcing him to pay his rent in cash and trying to impose an illegal rent increase.

The tenant pointed out that there is no valid basis to support the landlord's One Month Notice to End Tenancy for Cause under the Act and it should be cancelled.

Analysis – Notice to End Tenancy

It is necessary to establish whether or not the Tenant violated the Act by engaging in conduct that significantly interfered with or unreasonably disturbed others, of a magnitude sufficient to warrant ending the tenancy under section 40 of the Act.

The Residential Tenancy Guidelines provides information about what may constitute “significant Interference” including serious examples of:

- unreasonable and ongoing noise;
- persecution and intimidation;

- engaging in destructive or violent behaviour

In regard to the term, “unreasonably disturbed”, Black’s Law Dictionary defines “unreasonable” as:

“Irrational; foolish; unwise; absurd; preposterous; senseless;...
immoderate; exorbitant; ...capricious; arbitrary; confiscatory.”

In this instance I accept the tenant’s testimony that he had been freely walking about the entire property for years without incident. I also accept that the tenant considered there was a term of the tenancy giving him a right to be in other areas and not restricted only to the vicinity of his trailer site.

However, I find that the fact that the tenant has clearly been allowed to access the farm at will for most of the tenancy in the past and the fact that the tenant genuinely believes that the farm is a common area open to access, do not function as proof that this was an arrangement agreed to by both parties as a bona fide term of the tenancy.

In fact, given the layout of the tenant’s site and the rest of the property, I find that the tenant’s living area is distinctly segregated from the farm and business areas and there are different entrances, driveways, gates and fences clearly delineating the various areas and their uses. I find it would be presumed that the tenant would have the use only of the area immediately surrounding the trailer site, unless the parties had signed a tenancy term in a written contract granting the tenant additional liberty to access specific areas other than his own trailer site and yard.

I accept the landlord’s testimony that, from the landlord’s perspective, there was never any intention for the farm to be a common area to be shared with tenants.

In any case, I find that there would not be sufficient cause to end this tenancy merely because the tenant persisted in his firm and honest belief that he had a right to access the rest of the farm property, presuming the tenant was content to merely await the outcome of the hearing without further incident.

However, in this case I find that the tenant chose to continually confront the landlord in an unacceptable manner and engage in conduct that was disruptive to the landlord’s business and peace of mind. I find that the nature of this conduct meets the threshold to be considered as having significantly interfered with or unreasonably disturbed the landlord.

Regardless of the reasons or perceived justification that may be behind the tenant’s actions, the fact is the Act demands that a tenant refrain from bothering others particularly once a warning has been given to the tenant by the landlord.

Given the above, I find that the tenant's Application requesting that the Notice be cancelled is not supported under the Act and must therefore be dismissed.

During the hearing the Landlord made a request for an order of possession. Under the provisions of section 48(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Accordingly, I so order. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The remainder of the tenant's application has been rendered moot by the fact that the tenancy is ending.

Conclusion

Based on the evidence and the testimony discussed above, I hereby dismiss the tenant's application without leave. I hereby grant the landlord an Order of Possession effective October 31, 2014 at 1:00 p.m.

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

Dated: October 15, 2014

Residential Tenancy Branch

