



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC

Introduction

This hearing dealt with the tenants' application pursuant to the *Manufactured Home Park Tenancy Act* (the Act) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 40.

Both tenants appeared. The landlord appeared. The landlord was represented by her agent who is also her daughter. The parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's agent elected to call KM as a witness. The tenants elected to call CL as a witness.

The landlord attended the hearing and did not raise any issues with notice of this hearing or service of documents. The only documentary evidence before me in this hearing was the 1 Month Notice itself.

The agent testified that the landlord personally served the tenant SF with the 1 Month Notice on 31 March 2015. The tenant SF acknowledged receipt. On the basis of this evidence, I am satisfied that the tenants were served with the 1 Month Notice pursuant to section 88 of the Act.

At the hearing, the agent made an oral request for an order of possession in the event I dismiss the tenants' application.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

On 31 March 2015, the landlord served the tenants with the 1 Month Notice. The 1 Month Notice set out an effective date of 30 April 2015. The 1 Month Notice set out that it was being given as:

- the tenant or person permitted on the in the manufactured home park by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
 - put the landlord's property at significant risk;
- the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quite enjoyment, security, safety or physical well-being of another occupant or the landlord;
- the tenant has caused extraordinary damage to the manufactured home site; and
- the manufactured home site must be vacated to comply with a government order.

The agent testified that these all relate to two separate complaints:

1. The agent alleges that the tenant(s) are trafficking in controlled substances.
2. The agent alleges that the exterior condition of the tenants' site is in disarray.

The agent testified that the manufactured home park has been the subject of major inspections by the RCMP, fire officials and bylaw officials.

The agent testified that the RCMP told the landlord that there are problem properties in the manufactured home park. The agent testified that the RCMP continues to investigate certain persons that reside or resided in the manufactured home park. The agent testified that, on or about 18 March 2015, the RCMP certain raided certain residences within the manufactured home park. The agent testified that the RCMP arrested certain individual residents of the manufactured home park and removed various paraphernalia associated with trafficking in controlled substances.

The tenant SF denied that his property was one of the residences raided by the RCMP. The witness CL testified that neither his nor the tenants' manufactured homes were raided by the RCMP. The witness CL testified that both he and the tenant SF watched the raid take place.

The agent testified that the RCMP first approached the landlord in January 2015. At that time the RCMP encouraged the landlord to make changes to the manufactured home park that included removing problem tenants. The agent testified that the RCMP told the landlord that if these issues were not addressed, the landlord would have to "shut down" the manufactured home park.

The agent submitted that the tenants are problem tenants. The agent submits that the level of car and pedestrian traffic to the manufactured home is indicative of drug trade. The agent estimates that in any given day eight cars will approach the manufactured home site and remain

on the property for a short time. The agent testified that she has been recording the licence plate numbers of the visitors. The agent testified that at night approximately five to six persons will come to the manufactured home by foot. The agent testified that there is nothing remarkable about the individual visits other than their frequency and short duration.

The witness KM testified that there is a lot of traffic visiting the manufactured home site.

The tenant SF testified that he receives regular visitors to his home each day. The tenants are regular visited by healthcare workers and pharmacists. The tenants both require the administration of daily medicine, which necessitates the frequent visits. The tenant SF testified that the tenants do not receive visitors at night.

The agent testified that other residents of the manufactured home park are leaving because they are scared. The agent testified that one resident is scared to exit his home.

The agent testified that as recently as 20 May 2015 there have been incidents with the tenants. In particular on that date, residents of the manufactured home park reported seeing the tenant WF chasing a visitor to the manufactured home yelling that the visitor had stolen the tenant WF's "drugs".

The witness KM testified that he did not witness the events of 20 May 2015 personally, but heard from other residents of the manufactured home park that the events occurred.

The tenant SF testified that the agent's allegations in respect of trafficking in controlled substances are not correct. The tenant SF testified that neither he nor the tenant WF traffic in controlled substances.

The tenant SF testified as to the events of 20 May 2015. The tenant SF testified that he sold a friend some of his prescription antibiotics. The tenant SF testified that when the friend went to pick up the antibiotics the friend attempted to leave without paying the tenant WF. The tenant SF testified that his wife became upset and this is what triggered the event.

The witness CL testified that, to the best of his knowledge, the tenants do not traffic in controlled substances.

The agent testified that the tenant keeps a large volume of possessions outside his manufactured home including, bikes, boxes, and a refrigerator. The agent testified that bylaw enforcement has come to the manufactured home park to ask that the tenants tidy their manufactured home site. The agent testified that the bylaw officer spoke to the tenants in January, February, and March of this year. The agent testified that after the bylaw officer speaks to the tenants, they will move their belongings around and then move them back. The agent testified that she received letters from bylaw enforcement that generally reviewed the status of the manufactured home park, but that letters regarding the individual circumstances of

specific manufactured home sites were sent directly the residents of the individual sites. The agent testified that the property stored on the grass has caused the grass to die.

The witness KM testified that the tenants' manufactured home site is messy, but that one can see portions of the grass lawn through the possessions. The witness KM testified that the tenants keep bikes and tools outside.

The witness CL testified that the tenants keep boxes, an air compressor, and three bikes outside the manufactured home. The witness CL testified that the belongings are kept neatly and are not a big mess.

The tenant SF agreed that he stores belongings on the manufactured home site. The tenant SF testified that he stores a pressure washer, an air compressor, a couch, a fridge, shelves, and old propane tanks on the site. The tenant SF testified that he has never been told to move his belongings. The tenant SF testified that the amount of belongings he keeps outside is consistent with the other sites in the park. The tenant SF denies that he has ever been spoke to by bylaw enforcement. The tenant SF denied receiving any letters from bylaw enforcement in respect of the tenants' manufactured home site.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

There are six causes set out in the 1 Month Notice:

- Subparagraph 40(1)(c)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the manufactured home park by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park.
- Subparagraph 40(1)(c)(ii) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the manufactured home park by the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.
- Subparagraph 40(1)(c)(iii) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the manufactured home park by the tenant has put the landlord's property at significant risk.
- Subparagraph 40(1)(d)(ii) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where the tenant or a person permitted in the manufactured home park by the tenant has engaged in illegal activity that 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.
- Pursuant to paragraph 40(1)(e) of the Act, a landlord may terminate a tenancy in cases where the tenant or a person permitted in the manufactured home park by the tenant

has caused extraordinary damage to a manufactured home site or the manufactured home park.

- Pursuant to paragraph 40(1)(j) of the Act, a landlord may terminate a tenancy in cases where the manufactured home site must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

The landlord submits the alleged drug trafficking and storage of belongings on the exterior of the manufactured home site is an adequate basis for the 1 Month Notice.

The parties have provided very different submissions.

The landlord submits that the tenants are trafficking in drugs and that this forms a basis for several of the grounds set out in the 1 Month Notice. The tenants deny this allegation.

The landlord's only evidence that has been provided to me at this hearing regarding the trafficking allegation is that the tenants receive a lot of visitors at their manufactured home and that various, unidentified sites within the park have been identified as problem properties by the RCMP.

I have not been provided with any documentary evidence that would substantiate the landlord's claim. I find, on a balance of probabilities, that the landlord has failed to show that the allegation of trafficking substantiates any of the grounds set out in the 1 Month Notice.

The landlord submits that the condition of the exterior of the tenants' manufactured home site is such that it creates a basis for several of the grounds set out in the 1 Month Notice. The landlord provided testimony regarding the condition of the rental unit and communication with bylaw enforcement. The tenants deny this allegation. The tenants say that they were never warned that the belongings were a problem, and that they have never been spoken to by bylaw enforcement.

I have not been provided with any documentary evidence that would substantiate the landlord's claim such as letters from bylaw enforcement, letters of warning sent to the tenants, or photographs of the state of the manufactured home site. The landlord has not provided me with any municipal orders that suggest that the manufactured home site must be vacated as a result of the exterior storage of belongings. I find, on a balance of probabilities, that the landlord has failed to show that the condition of the exterior of the manufactured home site substantiates any of the grounds set out in the 1 Month Notice.

As the landlord has failed to show, on a balance of probabilities, that there is a basis for any of the grounds set out in the 1 Month Notice, the tenants' application to cancel the 1 Month Notice is allowed.

Conclusion

The tenants' application is allowed. The 1 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

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

Dated: May 21, 2015

Residential Tenancy Branch

