



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lombardy Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RR, FF
 OPC, O

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for cause. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the application.

The applications were scheduled to be heard separately, and the parties agreed that they should be joined to be heard at the same time, and I so ordered. My Interim Decision was provided to the parties.

The tenant and an agent for the landlord company attended the hearing, as well as another person who introduced himself as the owner. The landlord's agent and the owner both gave affirmed testimony, as well as the tenant. The parties were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Manufactured Home Park Tenancy Act* to an Order of Possession for cause?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of quiet enjoyment?

- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The landlord's agent (LH) testified that this tenancy began in 2007 or 2008 and is currently on a month-to-month basis. The tenant still resides in the manufactured home park in a manufactured home belonging to the tenant. Rent in the amount of \$410.00 is currently payable on the 1st day of each month, and although there are rental arrears, the landlord's agent does not know the amount.

The landlord's agent was present on July 31, 2015 when the owner personally served the tenant with a 1 Month Notice to End Tenancy for Cause and the tenant ripped it up. A copy of the notice has been provided and it is dated July 31, 2015 and contains an effective date of vacancy of August 31, 2015. The reasons for issuing the notice are:

- Tenant or a person permitted on the property 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;
 - put the landlord's property at significant risk;
- Tenant has not done required repairs of damage to the unit/site.

The landlord's agent further testified that the tenant is very abusive and obnoxious to management and other tenants within the park. The tenant invites others to abuse and ignore park rules and has tried to amalgamate other tenants into a Petition. Some tenants consider the tenant to be a bully and it has been reported to the landlord's agent that the tenant is knocking on doors asking other tenants to sign the Petition. The landlord's agent has not seen the Petition, but other tenants have described that the tenant was waving her arms and screaming, and one tenant just told her to go away. Another tenant told her that if she followed the park rules, she wouldn't have any trouble with management.

The fence is the tenant's responsibility which has never been repaired. Also, there are numerous 5 gallon pails full of some substance that harbor mosquitoes in the tenant's yard, and the yard generally is full of debris. Photographs have been provided. Some tenants complained of the condition of the park and the City came out and cited certain sites within the park with respect to unlicensed vehicles, graffiti, unsafe units, however this tenant says she doesn't have to do anything because her site was not listed in the

City's letter. The tenant has not made any effort to clean it up and has no intention of doing so.

The biggest issue is that the insurance for the park specifies that there shall not be any uninsured vehicles, and the park rules, made in September, 2013, also specify that as well as a maximum of 2 vehicles. The tenant has 5 vehicles, 2 of which are insured and the landlord's agent is not certain if the others are, and the tenant has not provided any proof of that. A notice went out to each tenant in October, 2014 about unlicensed vehicles being prohibited.

The tenant also refuses to sign a tenancy agreement and pays rent into a company account in order to avoid late fees.

The park rules also specify that pets are to be on a leash at all times, however the tenant's dog runs loose daily. The landlord's agent didn't give a warning letter to the tenant about it, having been told that paper can't continue to be passed on to the tenant until this hearing has concluded.

There have been several hearings before the director between the parties, some of which neither the landlord nor the landlord's agent knew about. The landlord was awarded an Order of Possession effective January 31, 2013 and a monetary order for \$1,550.00, however a previous manager attended that hearing and before the paperwork got to the landlord a new manager was in place and the orders were not enforced. Another hearing was held on November 25, 2014 and a copy of a Decision of the director dated July 23, 2015 has been provided.

The owner of the landlord (KS) testified that the tenant pointed a BB gun at him, and the tenant said she was going to put a bullet in the back of the owner's head. Police were called on July 31, 2015 who found the gun, but didn't want to take it further. The owner is scared and wants to stay as far away from the tenant as possible. The tenant also threatens about shutting down the park, says she knows bi-law people and does whatever she wants. It's gone too far.

The owner is trying to clean up the park; it's currently for sale, and the tenant's lot is full of debris.

Rent was \$265.00 or \$275.00 per month at the beginning of the tenancy. Increases have been given over time and the tenant has 2 lots. Rent for the 2 lots is \$660.00 per month. At the last hearing, the tenant was ordered to pay \$380.00 per month for both lots, and the landlord was awarded about \$650.00 for unpaid rent but the tenant hasn't paid it.

With respect to the tenant's application, new water lines were installed at a cost to the landlord of \$395,000 and at no cost to tenants.

The landlord seeks an Order of Possession of both sites.

The tenant testified that in October, 2014 the tenants in the park were handed notices to clean up lots, and there was a letter from the City to the property owner attached. Neither the tenant's lot, nor any of the tenant's vehicles were cited in any of the City's letters.

The parties have been involved in numerous arbitrations over the years and a list has been provided by the tenant. The tenant was awarded a second lot at arbitration in 2009. Further, the landlord served the 1 Month Notice to End Tenancy for Cause before receiving the Decision from the previous hearing. The tenant has to continually argue with new managers about the rental amount, which was awarded at \$300.00 per month for 2 lots in the last Decision, and about the tenant's vintage car.

The photographs provided by the landlord illustrate that the tenant has attached a new addition to the manufactured home, and debris is from that renovation which is still in progress. The fence was the existing fence at the beginning of the tenancy and the tenant plans to work on it next spring.

The tenant's dog is licensed and has an irregular heart beat. The dog has jumped the fence, or climbs it, but doesn't get loose daily. He bolted a couple of days ago and police brought him home. The pet has not been neutered yet because the veterinarian won't do it until the dog's heart issue is dealt with.

Since the landlord upgraded the water system, there is nothing but mud in the park, and the lots are nothing but dirt and weeds. Now there is no garbage collection, but tenants take their garbage to bins.

The tenant denies putting a gun to the landlord's head and the tenant made a request under the *Freedom of Information and Protection of Privacy Act* which shows that no gun was pointed. On the contrary, the landlord's agent attempted to assault the tenant. The landlords are trying to bully and intimidate the tenant.

The tenant also denies handing out any Petitions or telling the landlord that she knew anyone at the City. The tenants were going to start a committee respecting rent and in 2012 the tenant invited the landlord to a meeting, but he refused.

The tenant claims \$10,500.00 from the landlord for loss of quiet enjoyment for the whole time the tenant has resided in the manufactured home park, which amounts to 3 years

of rent. The tenant didn't request the filing fee in 2009 and seeks to recover \$50.00 for that hearing. The tenant filed the application for dispute resolution on October 6, 2015 claiming monetary compensation from the landlord for \$10,550.00 but was told that the filing fee would be higher and the tenant didn't have the extra money. Therefore, the claim was reduced to \$5,000.00 but the tenant still wants monetary compensation of \$10,550.00.

Analysis

I explained to the parties the legal principle of *res judicata* which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. I indicated that I would be reviewing the previous Decisions to ensure that I did not make a finding on a matter that had already been heard and decided upon. I have read those Decisions, and I find that the following Decisions are not relevant to this hearing: May 5, 2009; July 20, 2010; September 13, 2010; December 13, 2012; and April 14, 2015.

The hearing on July 23, 2015 dealt with the tenant's application for a monetary order, for a repair order, and for an order that the landlord comply with the *Act* or tenancy agreement. No monetary compensation was awarded, however the Arbitrator found that the tenant is entitled to exclusive possession of both sites. The tenant submits that because that Decision had not yet been received, the landlord did not have lawful authority to issue the 1 Month Notice to End Tenancy for Cause on July 31, 2015. I find that the 2 issues are not related, and the landlord did have the right to issue the notice.

The November 25, 2015 hearing dealt with an application by the landlord for an Order of Possession for cause, which was dismissed with leave to reapply because the landlord had not served the application upon the tenant within 3 days of making it as required by the *Act*. At that time, the Arbitrator stated: "No findings of fact or law were made in relation to the 1 Month Notice to End Tenancy issued July 31, 2015. Therefore, that Notice remains in full force and effect until such time as it is cancelled or set aside in accordance with the *Act*."

This hearing is the landlord's re-application for the Order of Possession for cause, as well as for the tenant's application for monetary compensation for loss of quiet enjoyment and a rent reduction.

I have reviewed all of the files, and nowhere has the tenant made an application to cancel the 1 Month Notice to End Tenancy (the notice) issued on July 31, 2015. The

Act requires a tenant who is served with such a notice to dispute it within 10 days or the tenant is conclusively presumed to have accepted the end of the tenancy. The landlord has applied for an Order of Possession. The tenant gave testimony to defend the reasons for issuing the notice, and even if I were to find that the tenant simply missed checking a box on the Tenant's Application for Dispute Resolution, the tenant didn't file the application until October 6, 2015, well after the time required under the *Act*.

I have reviewed the notice and find that it is in the approved form and that it contains information required by the *Act*. I also accept the testimony of the landlord's agent that the notice was personally handed to the tenant on July 31, 2015, and the tenant admitted ripping it up. In the circumstances, I find that the landlord is entitled to an Order of Possession.

With respect to the tenant's application for monetary compensation for loss of quiet enjoyment, I am not satisfied that the tenant has established that the landlord has caused the tenant any grief worthy of compensation. The tenant's evidentiary material contains several newspaper articles about the state of the manufactured home park, and several writings by the tenant alleging favoritism to some tenants in the park, however there is no evidence to substantiate any kind of harassment that would establish that the landlord has failed to comply with the *Act* or the tenancy agreement or that the tenant was aggrieved by any such actions. The tenant's evidentiary material and testimony lead me to believe that the tenant seeks monetary compensation from the landlord to punish the landlord for wrong-doing, which is a monetary order I have no authority to make. The application is dismissed.

With respect to the tenant's claim for \$50.00 as recovery of a filing fee from a hearing in 2009, the onus was on the tenant to make that application at the time. I have no way of determining whether or not the Arbitrator at that hearing would have awarded the filing fee if the tenant had applied. The application is dismissed.

I accept that there are issues with the park and its maintenance, but I am not satisfied that the tenant has established by what amount rent should be reduced. Further, having read the previous Decisions, there are already discrepancies in the amount of rent payable or received by the landlord. Therefore, I find that the tenant has failed to establish the claim and the tenant's application for a reduction in rent is dismissed.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00 as recovery of the filing fee.

The tenant's application is hereby dismissed in its entirety without leave to reapply.

This order is final and binding and may be enforced.

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: January 22, 2016

Residential Tenancy Branch

