



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

The Application for Dispute Resolution filed by the landlord seeks an Order for Possession based on a one month Notice to End Tenancy dated May 9, 2016 and setting the end of tenancy for June 14, 2016.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The landlord provided the following evidence:

- Oral testimony of the park owner and 4 witnesses
- Two Affidavits of service of the Application for Dispute Resolution and evidence packages
- Written statements from the witnesses who testified and another witness.
- CC camera footage of two incidents on which the Notice is based.

The tenant TL testified at the hearing. AH did not testify. The tenants did not provide documentary evidence.

The landlord testified he attempted to give the one month Notice to End Tenancy to the Tenant AH but she refused to accept it. He then posted it on the door. He came back 30 minutes later and found that the Notice had been taken off the door. The tenant TL testified he did not get the Notice and that AH is not a Tenant.

I find that the Application for Dispute Resolution/Notice of Hearing together with an evidence package was personally served on AH on July 9, 2016 and personally served on TL on July 12, 2016.

Issue(s) to be Decided:

The issue to be decided is whether the landlord is entitled to an Order for Possession?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on July 1, 2011. The rent is \$540 per month payable on the first day of each month. The tenant(s) have remained in the rental unit.

The tenants failed to file an Application for Dispute Resolution and the time to do so has expired.

Credibility:

A critical issue in this case is whether the landlord sufficiently served the one month Notice to End Tenancy on the Tenants. In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

“The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)”

The Residential Tenancy Act permits a party to serve a Notice to End Tenancy by posting it to the door the rental unit. The landlord testified he posted it after AH refused to accept it. TL testified he never received. I found it necessary to allow the parties to give evidence on the merits in order to assess the issue of credibility. After considering all of the evidence I determined the testimony of TL is not credible for the following reasons:

- TL testified he did not get the Notice to End Tenancy until August. The affidavit of service of the process server indicates that the evidence including the one month notice was served on the tenant TL on July 12, 2016 and on AH a few days prior to that. At the latest the tenant received the one month Notice to End tenancy on July 12, 2016 and not in August as alleged by TL
- TL gave testimony that is inconsistent with the documents. For example he testified AH is not a tenant. However, the tenancy agreement was signed by AH. Further, one of the major incidents involves testimony relating to TL assaulting

the landlord's witness #1. TL testified he dropped a plant holder when someone grabbed him. The CC camera evidence shows that he swung the plant holder at landlord's Witness #1 hitting him in the head.

- I found the evidence of the landlord relating to the service of the Notice to End Tenancy to be candid and consistent with the surrounding evidence. He testified he attempted to serve AH and she refused. He then posted it on the door. AH did not testify at the hearing.
- I found AH's evidence to be self serving and lacking of the precision necessary to be credible.

As a result I determined the Tenants were sufficiently served with the one month Notice to End Tenancy by posting on May 9, 2016.

Analysis:

Section 40(5) of the Manufactured Home Park Tenancy act provides as follows:

"40(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the manufactured home site by that date."

Policy Guideline #36 includes the following:

"Notice to End

Application for Arbitration Filed After Effective Date

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

For example, if a Notice to End has an effective date of 31 January and the tenant applies to dispute said Notice to End on 1 February, an arbitrator has no jurisdiction to hear the matter ***even where the tenant can establish grounds that there were exceptional circumstances***. In other words, once the effective date of the Notice to End has passed, there can be no extension of time to file for arbitration."

I determined the landlord was entitled to an Order for Possession. The landlord served a one month Notice to End Tenancy on the Tenant on May 9, 2016. It set the end of tenancy for June 14, 2016. The Tenant(s) failed to make an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the

Manufactured Home Park Tenancy Act provides the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Policy Guideline #36 provides that as the end of tenancy date has passed, the arbitrator does not have the authority to grant an extension of time to file an Application to set aside the one month Notice to End Tenancy even if exceptional circumstances existed for the failure of the tenants to file such an Application. Accordingly, I granted the landlord an Order for Possession effective August 31, 2016.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Normally, a determination that the tenants were properly served with the Notice to End Tenancy and Application for Dispute Resolution and the failure of the tenants to file an Application for Dispute Resolution is sufficient for an arbitrator to grant an Order for Possession as the Act provides that the tenants are presumed to have accepted the end of tenancy and they must vacate the manufactured home pad. However, I found it necessary to hear evidence on the merits to determine the issue of credibility.

The Notice to End Tenancy dated May 9, 2016 relies on the following grounds found in section 40 of the Manufactured Home Park Tenancy Act.

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Landlord's notice: cause

40 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(c) the tenant or a person permitted in the manufactured home park by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(d) the tenant or a person permitted in the manufactured home park by the tenant has engaged in illegal activity that

...

(ii) 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, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

Briefly the landlord relies on the following evidence:

- Landlord Witness #1 testified that in February 2015 he was assaulted by TL when TL smashed a clay flower pot over his head. The CC camera of Landlord Witness #1 shows this incident.
- TL has threatened to damage his new automobile.
- On March 9, 2016 the TL damaged his property by kicking his drain pipe and downspout. The CC camera shows this act
- TL and AH constantly harass and threaten him by yelling, swearing, verbal threats etc.
- Witness #2 witnessed the assault referred to above. He also testified he has been subject to swearing, yelling and verbal threats by the tenants.
- Witness #3 confirmed the verbal abuse. She testified her 8 and 11 year old children are afraid to walk past the tenant's manufactured home for fear of being abused.

The tenant TL gave the following testimony:

- He is own permanent disability and is going blind.
- AH is not a tenant but is his cousin and assist him.
- The witnesses of the landlord continually provoke by calling him a loser.
- The incident relating to the assault was provoke by landlord's witness #1 who gunned his car at him and gave him the finder. Witness #2 grabbed him and he dropped the clay pot on Witness #1
- The witnesses of the landlord are involved in a witch hunt to try to get rid of him.
- He has caught one of their friends stealing from his porch.
- His dog is friendly and there is no reason to be afraid of him.
- The witnesses of the landlord are conspiring to rid of him.

Analysis:

After carefully considering all of the evidence I determined the landlord has sufficient grounds to end the tenancy on the merits based on the following:

- I determined the tenant assaulted landlord's witness #1 by hitting him with a clay flower port. The CC camera does not have audio. Even if the tenant's testimony was believed (witness #1 provoked him by gunning his car, giving him the finger

and taunting him) that does not give the tenant the right to charge witness #1 and swing the clay flower pot at him. This has significantly interfered with and unreasonably disturbed another occupant of the manufactured home park.

- The tenant has vandalized the neighbor's property by kicking the drainpipe and downspout.
- The tenant TL's explanation of these incidents is not credible.
- I accept the testimony of the landlord and his witnesses that the tenants swear, verbally abuse, threatened, and attempt to intimidate other occupants in the manufactured home park on a regular basis.
- The conduct of the tenants with other has not improve and has become more provocative over time.

As a result I determined the landlord has established sufficient grounds to end the tenancy on the merits. The tenants have adversely affected the quiet enjoyment, security, safety and physical well-being of other occupants in the rental property. They have also significantly interfered with and unreasonably disturbed other occupants in the manufactured home park. They have seriously jeopardized the health or safety of another occupant.

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: August 18, 2016

Residential Tenancy Branch