



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application made August 18, 2016: CNC; FF

Landlords' Application made September 8, 2016: OPC; FF

Introduction

This Hearing was convened to consider Cross Applications. The Tenant applied to cancel a Notice to End Tenancy for Cause issued August 15, 2016 (the "Notice"); and for recovery of the cost of the filing fee from the Landlords.

The Landlords applied for an Order of Possession; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord EY testified that she served the Tenant with the Landlords' Notice of Hearing Documents and copies of the documentary evidence by leaving the documents at the Tenant's door on September 20, 2016. She stated that she had been told by the government agent that she had to hand-deliver the documents, but that the Tenant was uncooperative. She stated that after several attempts to serve the Tenant personally, she left the documents.

The Tenant agreed that she received the Landlords' documents on or about September 20, 2016. She testified that she did not receive notification that her documents were ready to be picked up at the Government Agent's Office. She stated that when she received the Landlords' Notice of Hearing package, she picked up her own documents at the government agent's office and served the Landlord. The Landlord EY acknowledged receipt of the Tenant's Notice of Hearing documents on September 26, 2016. The Landlords stated they wished to proceed with the Hearing and did not require an adjournment.

It is important to note that Sections 88 and 89 of the Act provide for methods of service of documents. Unless an order is made by the director, any of the methods provided in the Act may be used in order to serve another party.

It is also important to note that a party should make enquiries if they do not receive notification that their documents are ready for pick-up. In this case, an information officer at the Residential Tenancy Branch left a message at the phone number provided by the Tenant for the Tenant to pick up her documents on August 19, 2016.

In any event, it is clear that the Tenant made her application to cancel the Notice within the time allowed under the Act. The Landlords did not require an adjournment in order to prepare for the Hearing.

I described each party's evidence package as submitted to the Residential Tenancy Branch. The parties acknowledged service of each other's evidence package as described.

Issue(s) to be Decided

- Should the Notice be cancelled?
- Are the Landlords entitled to an Order of Possession?
- Is either party entitled to recover the cost of the filing fee?

Background and Evidence

The Landlords' testimony:

The Landlord EY testified that during a previous hearing with this Tenant in June, 2016, the Tenant was cautioned by the arbitrator with respect to her bad language. She stated that the Tenant continues to be verbally abusive to the Landlord, to other tenants, and to the public in general. EY stated that the rental site is beside the Landlord's office and that the Tenant makes obscene gestures and swears at people who are coming to and from the office.

EY testified that on July 29, 2016, the Tenant left her front door wide open when she was not at home. EY took a photograph of the open door and sent it to the Tenant, via text. She stated that the following morning, the Tenant started swearing at her again. EY testified that the Tenant also swore at a prospective tenant (BP) when he came to the office to enquire about renting an RV site. The Landlords provided BP's written statement in evidence. EY stated that BP decided to rent the site.

EY stated that the Tenant videotapes her “all the time”, and that she has “never had a tenant like this before in 24 ½ years”.

The Landlord AB stated that the Tenant “swears at people in our office” and that she was warned in June by another arbitrator to stop swearing. He stated that it is “hard to carry on business because the Tenant lives right beside our office”. AB stated that if the Tenant does not stop this behaviour, he will call the police and have her evicted.

EY testified that other tenants “don’t want to get involved... I get complaints, but nothing in writing”.

The Tenant’s testimony and her advocate’s submissions:

The Tenant acknowledged that her door was open on June 29, 2016, but stated that EY does not respect her privacy. She stated that EY called her a “stupid bitch” for leaving her door open.

The Tenant stated that BP was “on (EY)’s side” and that he swore at the Tenant.

The Tenant testified that EY will not allow the Tenant to plant things on the Tenant’s site, which is against the Tenant’s rights. The Tenant stated that she wants the Landlord EY to stop harassing her, and stated that she wants her right to privacy.

The Tenant’s advocate submitted that the Landlords have not shown sufficient cause to end the tenancy. He submitted that “none of the Tenant’s activity has crossed the threshold”; that the Tenant has made no threats; and has displayed no violent behaviour. He further submitted that the Landlords have not issued any warning letters to the Tenant.

The Tenant’s advocate stated that the problems arose over a dispute with respect to where the common area ends and the Tenant’s property begins, which was the subject of the hearing in June, 2016.

Analysis

Both parties referred to a previous hearing. With the consent of the parties, I accessed an electronic copy of the decision from the previous hearing. There was no caution or order made with respect to either party's language in the June 21, 2016 decision.

The Notice to End Tenancy provides the following reason for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The onus is on the Landlords to provide sufficient evidence that the tenancy should end for the reason(s) provided on the Notice.

The Landlords submitted that the Tenant was interfering with their ability to do business. I note that BP decided to rent from the Landlords after the altercation with the Tenant. I find that, in the absence of further documentary evidence or witness testimony, the Landlords have not proven that the Tenant has **significantly** interfered with or **unreasonably** disturbed another occupant or the landlord.

I recommend that any further communication between the parties be in writing, and hereby warn the Tenant that any future loud outbursts or obscene gestures which may be seen or heard from the common areas may give the Landlords cause to end the tenancy.

I also warn the Landlords that tenancies in British Columbia lawfully end only in accordance with the provisions of Section 37 of the Act.

The Tenant has been successful in her Application to cancel the Notice and I find that she is entitled to recover the cost of the \$100.00 filing fee from the Landlords. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct \$100.00 from future rent due to the Landlords.

The Landlords have not been successful in their Application and therefore I find that they are not entitled to recover the cost of the filing fee from the Tenant.

Conclusion

The Landlords' Application is dismissed.

The Tenant's Application to cancel the Notice to End Tenancy for Cause issued August 18, 2016, is granted. The tenancy will continue until it ends in accordance with the provisions of the Act.

The Tenant may deduct \$100.00 from future rent in recovery of the filing fee.

I recommend that any further communication between the parties be in writing, and hereby warn the Tenant that any future loud outbursts or obscene gestures which may be seen or heard from the common areas may give the Landlords cause to end the tenancy.

I caution the Landlords that tenancies in British Columbia lawfully end only in accordance with the provisions of Section 37 of the Act.

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: October 05, 2016

Residential Tenancy Branch