



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 a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order to cancel the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice").

The owner landlord and the landlord's agent (collectively the "landlord") appeared at the teleconference hearing and gave affirmed testimony. The tenant appeared with a witness, W.R., ("Witness W.R.") who also gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The tenant submitted copies of receipts purportedly showing rent paid by Witness W.R. to his mother who lives in another unit in the manufactured home park. The tenant, however, did not serve the landlord with a copy. The landlord objected to the evidence as a result of not having seen it. Accordingly, this evidence was not considered.

Issue to be Decided

- Is the tenant entitled to cancellation of the landlord's One Month Notice?

Background Evidence

The undisputed evidence established that a month to month tenancy started on April 1, 2016. Rent in the amount of \$650.00 is due on the first day of each month. There is no signed tenancy agreement, however, the landlord testified that one had been drafted.

The landlord issued a One Month Notice dated November 30, 2016, with an effective date of December 30, 2016. The landlord testified that he served a copy of the One Month Notice in person by leaving a copy with the tenant on December 1, 2016. The tenant recalled that she may have received a copy as early as November 29th, 2016.

The landlord's reasons for ending the tenancy set out in the One Month Notice are as follows:

The 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 of lawful right of another occupant or the landlord;
- put the landlord's property at significant risk;

The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

The landlord's One Month Notice arises out of complaints by the landlord against Witness W.R. who the landlord claims resides with the tenant in her unit. The landlord's complaints about Witness W.R. are as follows:

- he has been seen driving around the manufactured home park under the influence of alcohol with no driver's license and no insurance on the vehicle;
- that he is driving recklessly and spinning his tires with no regards for tenants, children, or park property;
- that he sits in the vehicle revving the engine in the late evening;
- that he has been yelling at tenants in a threatening manner and yelling at firemen who were there to put out a fire; and
- he threatened the manager saying he had a gun and was removed by police.

The tenant submitted a copy of the Trailer Park Regulations which states that any unlicensed and dead vehicles are not allowed in the park. The tenant disputed the regulations saying that she never signed a copy.

The landlord and tenant gave contradictory evidence as to whether Witness W.R. resided with the tenant in the tenant's unit. The landlord testified that he rented the unit to both parties. The tenant and Witness W.R. testified that Witness W.R. resides with his mother close by in another unit in the same park. The tenant testified that she and Witness W.R. are close friends and sometimes Witness W.R. stays overnight one or two nights each month.

The landlord testified that Witness W.R. has been seen driving two unlicensed and unregistered vehicles, a minivan and a Dodge Intrepid. The landlord further testified that Witness W.R. does not have a license to drive. The landlord testified that Witness W.R. had been seen driving these vehicles drunk and doing donuts in the road on the property. The landlord also complained about Witness W.R. revving the engine so that everyone in the park can hear it. The landlord testified that he sees Witness W.R. driving every day to get the mail as he resides in the park as well.

The tenant testified that the minivan and Dodge Intrepid are her vehicles and that they are not insured. The tenant acknowledged that Witness W.R. doesn't have a license. The tenant acknowledged that Witness W.R. has driven her vehicles on two occasions on the park property to make sure the car parts he was fixing worked. The tenant testified that Witness W.R. does not have access to her car keys without her knowledge. The tenant denied the allegations that Witness W.R. has driven recklessly; that he has revved up the engine in the evening hours causing a noise disturbance; and that he has driven under the influence of alcohol.

Witness W.R. admitted that he did not have a license. He acknowledged having driven the tenant's vehicle to move it from one place on the park property to another at the tenant's request. Witness W.R. testified that he does work on the tenant's vehicles during the day but not late at night. He denied the allegations that he was yelling at the firemen or other occupants and that he threatened the landlord.

The tenant is seeking to cancel the One Month Notice so that the tenancy continues.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find that it is not necessary for me to decide whether or not Witness W.R. resides with the tenant in her unit or whether he resides with his mother in another unit in the same manufactured home park. For purposes of determining the issues before me, I am satisfied that there is sufficient evidence that Witness W.R., at the very least, was permitted by the tenant to be on her property when she gave him access to her uninsured vehicles which are the subject of the landlord's complaints.

Policy Guideline #32 explains the definition of "illegal activity" in s.40(1)(d) of the *Act* as follows:

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not is an offence under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

Based on the foregoing, I find that Witness W.R., a person permitted on the property by the tenant, has engaged in illegal activity that has, or is likely to adversely affect the security and safety or physical well-being of another occupant. In making this finding I have taken into consideration the admissions of the tenant and Witness W.R. in giving their testimony. The tenant acknowledged that she let Witness W.R. drive her vehicles on the property knowing that the vehicles are uninsured and that Witness W.R. is an unlicensed driver. The reasons given by the tenant as to why Witness W.R. was operating her vehicles are not sufficient to excuse the unlicensed activity or remove the risk to the other occupants and the landlord.

Accordingly, I find that the tenant is not entitled to cancellation of the One Month Notice. Therefore, I dismiss the tenant's application.

As the tenancy will end for the reasons set out above, I need not consider the other reasons for ending the tenancy that the landlord has raised and the tenant has disputed.

When a tenant's application to dispute a landlord's notice to end a tenancy is dismissed, s.55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with section 52 of the *Act*.

Based on the above testimony and evidence, I find that the One Month Notice complies with section 52 of the *Act*. As a result, I find the landlord is entitled to an order of possession.

Conclusion

The tenant's application is dismissed and the One Month Notice is upheld.

Pursuant to section 55 of the Act, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 07, 2017

Residential Tenancy Branch