



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROTEA PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT FF CNC

Introduction

This hearing dealt with an application by the landlord pursuant to the *Manufactured Home Park Tenancy Act* ("the Act") for orders as follows:

- cancellation of a landlord's notice to end tenancy for cause pursuant to section 48;
- more time to dispute the landlord's notice to end tenancy pursuant to section 66; and
- return of the filing fee pursuant to section 65 of the *Act*.

Both the landlord and the tenant appeared at the hearing. The landlord was represented at the hearing by agent, S.B. (the "landlord") while the tenant was represented by a friend, C.L. It was explained to the hearing by C.L. that the tenant was elderly and very hard of hearing and was unable to properly represent herself. C.L. stated that she had full authority to present submissions on behalf of the tenant. C.L. will herein be referred to as the "tenant."

The landlord and tenant were both given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed receipt of the landlord's 1 Month Notice to End Tenancy ("1 Month Notice"), while the landlord confirmed receipt of the tenant's application for dispute resolution. I find that both the landlord and the tenant were duly served under the *Act*.

Issue(s) to be Decided

Can the tenant cancel the landlord's Notice to End Tenancy?
Should the tenant be granted more time to make an application?
Is the tenant entitled to a return of the filing fee?

Background and Evidence

Testimony was provided by the landlord that the manufactured home park was purchased by the current owners in 2006 with the tenant already in occupation of her pad where she currently pays a rent of \$475.00 per month.

The landlord explained that he is seeking an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued to the tenant on May 29, 2017. Specifically the landlord has cited the following reasons for seeking an Order of Possession:

- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- The tenant has allowed an unreasonable number of occupants in the unit/site;
- 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; and
- The tenant has breached a material term of the tenancy that was not corrected within a reasonable time after written notice to do so.

This is the second Notice to End Tenancy for Cause that has been issued to the tenant. In April 2015 the landlord served a 1 Month Notice for an alleged breach of a material term of the tenancy. This notice was later withdrawn by the landlord.

During the course of the hearing, the landlord explained that he was seeking an Order of Possession because of the actions of the tenant's daughter's boyfriend. He said that the boyfriend would often attend the park with a dog, that other residents of the park were intimidated by both him, and his dog and that the boyfriend, would, on occasion, reside in the manufactured home with the tenant and her daughter. The landlord noted that the park had a strict no dog policy, and that several neighbours had called him to complain about the presence of the daughter's boyfriend and his dog. The landlord was unable to say specifically when he was contacted by the other park residents concerning the boyfriend and his dog, but he explained that the tenant was sent a letter by the management company on December 21, 2015 describing concerns around dog.

In addition, the landlord testified that numerous people in the community were concerned about the presence of the boyfriend and therefore did not want their names associated with any documents complaining about him. As part of the landlord's evidentiary package, three letters written by the property management company and

dated, April 8, 2015, June 13, 2016 and March 20, 2017 were submitted as evidence. These letters note complaints that were received by neighbours.

Finally, the landlord also said that the backyard area of the property is of ongoing concern to those located in the park. He stated that a neighbour had moved because of the ongoing presence of the boyfriend, his dog and the clutter in the back area of the property. The landlord acknowledged that the tenant always pays her rent on time, and he does not have anything personal against her. He explained that he was only proceeding with Order of Possession because of his concerns that the daughter's boyfriend and his dog would return.

The tenant, through the testimony of her friend C.L., strongly disputes the landlord's allegations. C.L. noted that the shed and backyard area were cleaned on June 2, 2017, that the tenant's daughter has rented a home in town starting June 2017, and that the tenant is aware that her daughter's boyfriend and his dog are not welcome in the park. As part of the landlord's evidentiary package, were two letters signed by the tenant asking the neighbours to call the RCMP if they see her daughter's boyfriend on the property. These letters note that he is not welcome on the property and is trespassing.

Furthermore, C.L. noted that the tenant has been a model resident of the park, ensuring she always pays her rent on time and taking adequate steps when contacted about the landlord's concerns regarding the problems associated with the tenant's daughter and her boyfriend. C.L. questioned the complaints that the landlord has received. She noted that there were no specific complaint letters from any named tenants, and that the tenant enjoyed a friendly relationship with the neighbour who allegedly moved out due to ongoing concerns with this boyfriend and his dog. She said that the tenant expressed being happy that her daughter was no longer on the premises.

Analysis

The landlord is seeking an Order of Possession for the following reasons:

- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- The tenant has allowed an unreasonable number of occupants in the unit/site;
- 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; and
- The tenant has breached a material term of the tenancy that was not corrected within a reasonable time after written notice to do so.

I will begin with an analysis of the final point above, and then will examine the other three points in ascending order.

The Tenant has Breached a Material Term

After carefully reviewing the evidence submitted at the hearing by the landlord, I can find no copy of the manufactured home park tenancy agreement signed between the parties. Without this key piece of evidence, it is very difficult to make a determination concerning whether or not a breach of a material term has occurred.

A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As this evidence was not present at the time of the hearing, I find that I cannot determine the importance of the term to the overall tenancy agreement, nor can I determine the exact activity it prohibits. For these reasons, I dismiss this aspect of the landlord's claim.

The Tenant or Person Permitted on the Property has Significant Interfered with or Unreasonable Disturbed an Occupant or Landlord.

Section 40 of the *Act* states that a tenancy may be ended when the tenant or a person permitted on the property by the tenant...has significantly interfered with or unreasonably disturbed another occupant and seriously jeopardized the health or safety or a lawful right or interest of another occupant. It also provides a landlord an opportunity to apply for an end of tenancy when a tenant has allowed an unreasonable number of occupants in the unit/site, or when 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.

Based on the testimony presented at the hearing, it is evident that the residents of the park have suffered a disruption as a result the actions of the tenant's daughter's boyfriend and his dog.

The question is therefore whether or not these purported incidents can be classified as being of "significant" or "unreasonable" in nature, and whether they seriously

jeopardized the health and safety of the other occupants. When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to justify the notice and the end of tenancy based on the grounds supplied. In this case, the landlord is relying on the testimony of anonymous witnesses, who did not supply any information detailing their specific complaints with individuals permitted on the property. The landlord testified that these witnesses feared reprisal at the hands of the boyfriend, yet I find that no evidence was presented by the landlord documenting instances where the boyfriend has specifically threatened anyone or that he has seriously jeopardized the health or safety or a lawful right or interest of another occupant.

The Tenant has Allowed an Unreasonable Number of Occupants

I find little evidence demonstrating that the tenant has allowed an unreasonable number of occupants in the unit/site. Evidence presented at the hearing as part of the landlord's own evidentiary package demonstrates that the tenant took steps to inform the residents of the park that her daughter's boyfriend was not welcome in the park, and to advised them to contact the RCMP to report him for trespassing. Furthermore, testimony from the tenant's assistant, C.L., confirmed that the daughter had moved off the property.

The landlord alleged that the boyfriend had engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the park. *Residential Tenancy Policy Guideline #32* notes, "the term *illegal activity* would include a serious violation of federal, provincial or municipal law, whether or not it is an offense 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."

I was provided no police reports, nor evidence of how the activities of the boyfriend had a significant impact on the other occupants. The landlord explained that the tenant's neighbour vacated the property because of his ongoing concerns with the presence of the boyfriend on the property. This neighbour may have been concerned about the presence of the boyfriend; however, very limited detail was provided by the landlord highlighting the specific concerns that this neighbour had with the boyfriend.

For the above reasons, I find that the landlord has failed to demonstrate why the actions of the tenant's daughter's boyfriend and his dog should lead to an end of this tenancy. The tenant pays rent on time, and is herself very quiet and respectful of her community. The tenant has taken steps to ensure that her neighbours were made aware that the

boyfriend and his dog are not welcome on the property, and the tenant's daughter has moved to a home of her own, thereby giving the boyfriend no reason to attend the premises.

As the landlord was unsuccessful in his application, he may not recover the cost of the filing fee.

Conclusion

The landlord's application for an Order of Possession is dismissed. This tenancy shall 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 Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: August 11, 2017

Residential Tenancy Branch