



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNC, ERP, LRE

Introduction

This hearing was convened to deal with the tenant's application filed June 6, 2017 under the *Manufactured Home Park Tenancy Act* (the "Act") for an order cancelling a 1 Month Notice to End Tenancy for Cause dated June 1, 2017 (the "1 Month Notice") and for orders requiring the landlords to make emergency repairs and allowing the tenant to reduce rent for services or facilities agreed upon but not provided. The tenant's application indicated that other orders were sought, but the tenant advised at the beginning of the hearing that he did not seek any other orders.

Both of the landlords and the tenant attended and had full opportunity to be heard, to present affirmed testimony, to make submissions, to present documentary evidence, and to respond to the submissions of the other party.

Service of the tenant's application and notice of hearing was not at issue.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the tenant entitled to an order that the landlords make emergency repairs?

Is the tenant entitled to a rent reduction?

Background and Evidence

This tenancy began in May, 2008. Rent of \$250.00 is due on the first of each month. The written tenancy agreement was in evidence. It includes an addendum that specifies this in an "adult oriented" park and that visiting children are to be supervised.

The 1 Month Notice under consideration was served on the tenant on June 1, 2017. Another 1 Month Notice, dated June 8, 2017, was served on the tenant shortly thereafter. The landlords testified that they were later advised by the Residential Tenancy Branch that they did not need to issue another notice. The landlords withdraw the June 8, 2017 1 Month Notice. The tenant was served with another 1 Month Notice in October of 2016, which was rescinded soon after.

All of the 1 Month Notices indicate that the tenant has "significantly interfered with or unreasonably disturbed another occupant or the landlord."

The 1 Month Notice dated June 1, 2017 states: "March April May 2017 revved motor repeatedly in driveway, park and road disturbing other owners tenants and RVers. Muffler very loud – broken or non existant. March, April disturbed many tenants including [AS] . . . and [KG] . . . while under influence of drugs. Also us, owners → very rude." [Reproduced as written.]

The 1 Month Notice dated June 8, 2017 states: "June 6/17 – morning – went to residence of KG and knocked on her door and unreasonably disturbed and upset her by coming and questioning her about previous incident even though he was told never to go near her again and promised he wouldn't." [Reproduced as written.]

In written submissions the landlords make clear that they have had a long term relationship with the tenant and have assisted him in many ways. They also state that they have "shown [the tenant] love, taken him to church, invited him to potlucks as our guest, included him in games and barbeques and invited him into our home for Christmas festivities." They also said that they have loaned him money, helped him with repairs, and generally been available to him at a moment's notice.

At the hearing, the landlords stated that the main concern was the tenant's bothering KG, a tenant on another site, "especially" in October of 2016 when her husband had just died. They said that in October, 2016 the tenant circled the manufactured home park late at night and drove in and out of KG's driveway, and then parked in her drive way and asked to come in. They said that KG was "freaked out" by this and "beside herself with terror" but did her best not to show this to the tenant when they spoke.

The landlords served the tenant with a 1 Month Notice as a result of this incident, but rescinded it after he confided that he had been seeing a drug counsellor. They say he took them to see his counsellor and committed in writing to not contacting KG and not using drugs. (The tenant in response said that the landlords barged in without invitation on a meeting between himself and his counsellor).

The 1 Month Notice dated June 1, 2017 was issued because tenant was revving the motor on his truck, bothering other tenants and the landlords. The landlords say the tenant uses his motor to show his emotions. They also say he cannot seem to back his truck up into his driveway without making several attempts, which is also noisy. The landlords wrote the tenant a letter dated May 26, 2017 requiring that he repair his muffler by May 31, 2017. A copy of that letter was in evidence.

The landlords also say that the tenant has recently "raced around the park" on foot, yelling that someone was chasing him and trying to kill him.

The landlords submitted written statements signed by neighbouring tenants in evidence. One was signed by KG and dated June 10, 2017. It describes the interaction between herself and the tenant in October of 2017.

Another person, AS, signed a statement dated April 10, 2017. It describes the tenant's running around the park. It also states as follows:

Also, you have been in our park when [tenant] has been trying to back his mower and trailer into his driveway and also when he has driven down the road with such a loud aggressive driving method that [tenant] has revved his truck with a broken or non existent muffler that you can hear his revs all the way out to the highway . . . This roaring noise has interfered with your quiet enjoyment of your lot and even inside your mobile home and has upset you.

The landlords confirmed in response to my question that they drafted these statements.

There were also an email from the landlords to HS and CS (a couple) dated June 14, 2017 asking them to agree or disagree with a statement included in the email as follows:

. . . we have been unreasonably disturbed often by the noise of [tenant's] truck with loud muffler going around the park at all hours and racing unnecessarily noisily up and down . . . to and from our park . . . At times we could hear his truck all the way to [the highway]! This is approximately 3 blocks away! We have found this noise unreasonable and disturbing.

HS and CS respond in the affirmative.

Lastly, the landlords' evidence included a statement dated June 14, 2017 from tenants of another site:

. . . our concern with him is the people that he has coming and going and most of all residing at his residence. The people that reside there are not people that would normally be allowed in a park for 55+ and I believe that if you had any control or knowledge of the people living there, they would not ever have been allowed. This being a 55+ park, we would expect it to be older people like ourselves, quiet, and not any illegal or strange things going on.

We have heard him revving his engine, and racing up and down . . . on a few different occasions, and also yelling, using foul language towards yourself, and being in a state that he thought someone was chasing him as he ran through the park very early in the day. [Reproduced as written]

The landlord's written submissions included an allegation that the tenant cautioned them to move out of the road "because he'd hate to run them over."

The tenant in response said that he attends church regularly and would not threaten the landlords. He said that during the interaction described directly above, the landlords were "nitpicking at him" to fix his muffler and asking inappropriate questions about his wife's age. He said that that he asked the RCMP to mediate in order to keep things calm, and that the RCMP agreed to hold off writing him a ticket for his muffler in order to give him time to get fixed. He further said that the muffler was added or repaired before June 5, 2017. The landlords were skeptical of this and the tenant committed to have another mechanic assess whether the truck could be made even quieter.

Regarding the October, 2016 interaction with KG, the tenant said that he was not "circling the park" disruptively but looking for his dog and that KG came out when he was turning around in her driveway and asked him what he was doing. He did not ask to go in to her unit. He also said that he had been friends with KG's husband and believed that he and KG were friends. The tenant also testified that after he received the 1 Month Notice in October of 2016, he avoided KG as promised, and only spoke with her again after receiving the 1 Month Notice dated June 1 because she was "on the paperwork."

The tenant believes the landlords do not like him because he has a substantially younger wife. He understands the landlords have been sending out emails to other tenants in the manufactured home park asking if he is bad. He suggested this was defamatory and a breach of his privacy. He said that others in the park have approached him to tell him they do not agree with the landlords' methods. The tenant also said that he sees the landlords conversing with users of the park and can tell they are talking about him as they look over at him from afar.

Lastly, the tenant said that he did not use drugs and run around the park. He said that he was having an anxiety attack.

It was agreed that the tenant purchased his manufactured home from the landlords in 2008. The tenant complains that there are wiring issues in the home and seeks an order requiring the landlords to make emergency repairs and to reduce his rent. The landlords say that the unit was properly wired when they sold it to him and that he has since worked on the electrical himself although he is not an electrician.

Analysis

Should the 1 Month Notice be cancelled?

Section 40(1)(c)(i) of the Act allows a landlord to end a tenancy for cause where the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Although the landlords' allegations are concerning, their evidence is not sufficient to establish that the tenant has been so seriously disruptive that the tenancy should end.

I accept that the tenant's truck, while it was running without a functioning muffler, was noisy. However, the landlords have not established that the noise has been seriously or consistently disruptive. The only correspondence in evidence about the vehicle noise was written by or solicited by the landlords around or after they issued the 1 Month Notices in June of 2017. One would think that if these noises were seriously disrupting the neighbours, the neighbours themselves would have written complaints in advance of the 1 Month Notices issued in June of 2017. Here, instead, the complaints are drafted by the landlords after the issuance of the 1 Month Notices in June.

Additionally, the June 14, 2017 statement cites only "a few occasions" of engine noise. The other correspondence concerning engine noise is very general. The 1 Month Notice issued and then rescinded in October, 2016 does not mention engine noise as a concern, and the tenant has since repaired or added a muffler. On balance, then, the engine noise seems to have been a time-limited issue that has since been remedied or at least improved.

Although the landlords said that their biggest concern was the tenant's interaction with KG, I cannot see how what he is said to have done could have reasonably upset his neighbour so seriously that his tenancy should end. Additionally, the tenant has abided by the landlords' terms and kept his distance from KG since October of 2016. He has also recommitted to doing so going forward. The only reason he spoke to her in June of 2017 was to inquire about the landlords' relying on her concerns from October of 2016 to terminate his tenancy eight months later. Lastly, it seems unlikely that the landlords would have rescinded the 1 Month Notice issued in October of 2016 if the interaction between the tenant and KG was actually very worrisome.

The landlords' written and oral submissions, as well as the June 14, 2017 statement, support the tenant's sense that the landlords and some neighbours are uncomfortable with his wife's age. This calls into question the severity of the tenant's alleged disruptions and the motivations of the complainants. I note that the tenancy agreement does not require occupants to be 55 or older. It simply says the park is "adult oriented" and that children must be supervised when visiting.

Lastly, I cannot accept that the tenant's anxiety attack or delusional thinking was disruptive enough to warrant ending the tenancy. Although the landlords were not specific about when this occurred, it is recorded in AS's statement dated April 10, 2017. This means that the landlords left the incident alone until June 1, 2017, when they issued a 1 Month Notice. Again, this suggests the incident was not of as much concern to AS or the landlords as the landlords now say. AS's statement was also drafted by the landlords.

Is the tenant entitled to an order for emergency repair or reduced rent?

Under the Act, the tenant leases a manufactured home site from the landlords. Once he purchased the manufactured home from the landlords, he became responsible for it as its owner. Any remedy he may or may not have against the landlords for the condition of the manufactured home when he bought it is not covered by the Act.

Conclusion

The tenant's application to cancel the 1 Month Notice is successful. The tenancy will continue until it is ended in accordance with the Act.

The landlords and the tenant appear to have a relatively close personal relationship. This may have blurred the lines between their personal lives and their business relationship (their landlord/tenant relationship). However, by serving the tenant with the 1 Month Notice at issue, the landlords have put the tenant on notice they will no longer tolerate certain things.

The tenant is cautioned to keep his truck running as smoothly and quietly as possible so as to avoid future noise complaints.

The tenant is also cautioned to avoid contact with KG. The tenant has committed to avoiding contact with her.

Both parties are reminded that they can negotiate a Mutual Agreement to End Tenancy and/or the sale of the tenant's manufactured home.

The tenant's applications for emergency repairs and for a reduction in rent are not allowed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 08, 2017

Residential Tenancy Branch