



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OPT FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing, via teleconference, was held on January 3, 2018. This hearing was adjourned to allow more time to hear the issues, so a second oral hearing was held on March 5, 2018. The Tenants applied for the following relief, pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"):

1. cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 40;
2. an order of possession for the Tenants; and,
3. recovery of the filing fee the Tenants incurred to pay for this application.

The Tenants attended the hearing and provided testimony. They were accompanied by their advocate, A.T. The Landlord attended the hearing and was accompanied by a neighbour of the Tenants, R.M. Both parties confirmed receipt of each other's documentary evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the Tenant entitled to have the Landlord's Notice to End Tenancy cancelled?
 - If not, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to an order of possession?

Background and Evidence

Both parties provided a significant amount of documentary evidence and oral testimony. Much of the testimony provided by both parties was contentious, conflicting and difficult to resolve, without further evidence. In this review, I will not summarize and address all evidence and testimony. However, I will focus on the facts and evidence which underpin my findings.

The Tenants have lived in this manufactured home park for 21 years, and stated that it was not until about 5 years ago that things started to go wrong. The Tenants stated that about 5 years ago R.M. moved next door to them, and conflict began shortly after this time.

Both parties have been involved in multiple arbitration hearings over the last few years, largely a result of conflict between the Tenants and their neighbour, R.M., who was present at the hearing on behalf of the Landlord. An arbitrator at the previous hearing discussed the issues between the parties. For ease of reference, I have provided the file numbers from previous hearings on the front page of this decision. The Landlord provided a copy of this Decision from July 9, 2014, where the Arbitrator made an Order as follows:

- The parties, R.M. and J.S and M.S., will avoid contact either physically or verbally at all times.

In this Order, the Arbitrator made it clear to the parties that a breach of this Order could result in the tenancy ending and an order of possession being issued, which would have significant consequences for the parties given that the nature of their tenancy, and their health status.

Subsequently, following an incident on September 3, 2017, the Landlord issued a Notice on September 11, 2017 for the following reasons:

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

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.
- jeopardize a lawful right or interest of another occupant or the landlord.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Under the Details of Cause section, the Landlord stated that the Notice was issued because the Tenants violated the Arbitrator's Orders, as the Tenant, J.S., followed and threatened another tenant, R.M. Given that the Landlord indicated this information under the Details of Cause section of the Notice, and the Tenants had notice this was an issue in this dispute, I hereby amend the Notice to include the ground:

- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

Although there have been many disagreements over the years between the Tenants, J.S. and M.S. and R.M., I will focus on the more recent incident on September 3, 2017, as it appears to be what precipitated the Notice before me. All parties agree that there was an altercation on that day which occurred on the property near where both parties reside. R.M. provided one account of what happened, and J.S. and M.S. provided another version of events. Both sides feel the other side was the instigator and the aggressor and each party provided a version of events to support their story. Both parties also agree there was a third party witness present for some of the incident. This individual provided a written statement which was included in the Landlord's evidence package and states the following:

- On September 3, 2017, at around 6:30 pm, she saw R.M. and J.S. engaged in volatile behaviour (yelling, swearing).

- As she approached she noticed J.S. had a stick in his hand and looked “very angry”.
- She tried to stop J.S. before he caught up with R.M.
- She was unsuccessful in stopping the Tenant, J.S., and he “blew right past” her, heading down the path towards R.M.
- She stated she continued to yell at J.S. to stop but he kept on going.
- She then stated she eventually caught up to J.S. and was able to de-escalate him before something bad happened.

Analysis

In this decision, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid. I note in civil law matters such as these, the standard of proof is based on a balance of probabilities, not the criminal court standard of proof beyond a reasonable doubt.

The Landlord has issued the Notice under multiple grounds. However, I turn to the following ground:

Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

As per section 40 of the Act (see below), the Landlord is entitled to issue a Notice to End Tenancy for Cause if the Tenants do not comply with the order issued to them.

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:

[...]

(k) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i) the date the tenant receives the order;

(ii) the date specified in the order for the tenant to comply with the order.

Although there is a history of poor relations between the Tenants and their neighbour, R.M., I will focus my analysis on the more recent incident of September 3, 2017, as this appears to be what precipitated the Notice. After considering the totality of the evidence, it is clear that the parties disagree on who instigated the event on September 3, 2017. The parties also disagree on what was said, who was the aggressor, what sticks were used as weapons, and what threats were made. Ultimately, it is difficult to resolve all of these matters without further evidence. However, both parties agree that there was a witness present who also provided a written statement for this hearing. In this case, I rely on this witness statement as probative and reliable evidence to help clarify what actually occurred.

The Landlord provided a written statement from the witness, who appears to be the only independent third party present during this incident, which highlights the following:

- On September 3, 2017, at around 6:30 pm, she saw R.M. and J.S. engaged in volatile behaviour (yelling, swearing).
- As she approached she noticed J.S. had a stick in his hand and looked “very angry”.
- She tried to stop J.S. before he caught up with R.M.
- She was unsuccessful in stopping the Tenant, J.S., and he “blew right past” her, heading down the path towards R.M.
- She stated she continued to yell at J.S. to stop but he kept on going.
- She then stated she eventually caught up to J.S. and was able to de-escalate him before something bad happened.

Next, I turn to the Order issued by the Arbitrator, to both parties, at a previous hearing on July 9, 2014. The Arbitrator made an Order as follows:

- The parties, R.M. and J.S and M.S., will avoid contact either physically or verbally at all times.

Based on the witness statement, which I find offers the most reliable account of what happened, I find the Tenant, J.S., clearly violated the above Order issued to him. Regardless of what occurred leading up to this particular moment, J.S. appeared to be engaged in active pursuit and at least verbal contact with R.M. in a hostile manner.

It was made clear to the parties (R.M., J.S. and M.S.) that a breach of the Order made to them in 2014 could result in the tenancy ending and an order of possession being

issued. Overall, I find the Landlord had sufficient grounds to issue the Notice based on non-compliance of an Order, as listed above.

Having made this finding, it is not necessary to consider the remaining grounds indicated on the Notice. Further, it is not necessary to further dissect or address the remaining facts and evidence presented at the hearing. The Tenants' application to cancel the Notice is dismissed. The tenancy is ending.

Under section 48 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 45 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession.

Since the Tenants were not successful with their application, I decline to award them recovery of the filing fee. With respect to the Tenants' request for an order of possession, I find they have not provided any evidence or testimony to support their application under that ground. It appears the sole purpose of their application was to cancel the Landlord's Notice. As such, I dismiss this portion of the Tenants' application.

Conclusion

The Tenants' application is dismissed, in full.

The Landlord is granted an order of possession effective **March 31, 2018, at 1pm**, after service on the Tenants. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: March 8, 2018

Residential Tenancy Branch