



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BELCO HOLDINGS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- Cancellation of a One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 40.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord called three witnesses, all of whom are current tenants of the manufactured home park in which the tenant resides.

Both parties agreed that the tenant personally served the landlord with the dispute resolution package on March 5, 2018. I find that the landlord was served with this package on March 5, 2018 in accordance with section 82 of the *Act*.

I note that Section 48 of the *Manufactured Home Park Tenancy Act* (*Act*) requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to cancel the One Month Notice pursuant to section 40 of the *Act*?

2. If the tenant is unsuccessful in their Application, is the landlord entitled to an Order of Possession, pursuant to section 48 of the Act?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and all three witnesses, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord and tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in March of 2014 and is currently ongoing. Monthly pad rent in the amount of \$520.00 is payable on the first day of each month. A written tenancy agreement was signed by both parties but a copy was not provided for this hearing.

The landlord testified that he has received numerous complaints about the tenant and that a number of tenants have informed him that they fear for their personal safety. When asked to be more specific about events that have caused other tenants to fear for their safety the landlord was only able to provide details of one incident occurring in November of 2017.

The landlord testified that one night in November he was at the manufactured home park (the "park") and heard some yelling and shouting and subsequently some moaning. He went to investigate and found another tenant, witness W.P., lying at the end of the tenant's driveway crying out in pain. The landlord testified that witness W.P. said that the tenant had pushed him and that he thought he might have broken his hip. At this point the police and an ambulance were called.

Witness W.P. testified that one night in November, he was visiting another tenant in the park who lived next door to the tenant, he went outside to have a cigarette and his dog accompanied him. Witness W.P. testified that his dog wandered off and he started calling his dog and looking for him and it was at this point that the tenant exited her dwelling and started yelling at him to get off her property.

Witness W.P. testified that the tenant started to hit him and push him towards the road, the tenant then grabbed the flashlight he was holding out of his hand and threw it at him telling him to get off her property. Witness W.P. testified that he bent down to retrieve the flash light and that before he got back up the tenant shoved him hard and he "went flying" and broke his hip when he landed. The police were called and he was taken to

the hospital via ambulance where he stayed for 1 week and underwent surgery for his broken hip. Witness W.P. testified that charges have been laid against the tenant for assault causing bodily harm and that her next court date is in January 2019.

The tenant testified that on the night in question in November, her dog started barking, alerting her to an intruder on her property. She went outside to investigate and found witness W.P. on her property. The tenant testified that remarks were exchanged and she told witness W.P. to get off her property. The tenant testified that she did not hit witness W.P. but did poke him on his chest and shortly thereafter he tripped over his own boots and fell and injured himself. The tenant testified that the police were involved and that her next court date is in January 2019.

Witness M.T. testified that roughly two years ago she and witness S.S. went to visit one of their friends at the park; as she entered the doorway of the manufactured home, the tenant shoved her through the entrance and up against a counter. Witness M.T. testified that witness S.S. tried to pull the tenant off and that is when the tenant started choking witness S.S. The police were called due to this incident. Witness S.S. confirmed the above sequence of events. Both witness M.T. and witness S.S. testified that the tenant made them fear for their personal safety. The tenant denied getting in a physical altercation with witness M.T. and witness S.S.

Both parties agree that the landlord personally served the tenant with the One Month Notice in person on February 26, 2018. The One Month Notice has a corrected effective date of March 31, 2018, pursuant to section 46 of the *Act*.

Analysis

I find that the One Month Notice was personally served on the tenant on February 26, 2018 in accordance with section 81 of the *Act*.

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of

the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

In this case, the landlord's testimony as to the events of the night in question in November 2017 is in harmony with that of witness W.P. That is to say that both witnesses independently provided their recollection of the night in question and those recollections were consistent with each other. It is the recollection of the tenant which is inconsistent with the other testimony provided at the hearing. I therefore accept witness W.P.'s version of facts over that of the tenant's.

Similarly, witness S.S. and witness M.T. independently provided testimony which mirrored the other. Once again, it is the tenant's testimony which differs substantially. I therefore accept the testimony of witness S.S. and M.T. over that of the tenant.

Section 40(1) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. I find that the actions of the tenant have seriously jeopardized the health and safety of other occupants of the park which is evidenced by witness W.P.'s broken hip and the testimony of witnesses M.T. and S.S.

Conclusion

Pursuant to section 48 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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 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: May 22, 2018

Residential Tenancy Branch