



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VALLEY CONCEPTS LTD. o/a ASPEN PLACE and [tenant name
suppressed to protect privacy

DECISION

Dispute Codes CNC, FF

Introduction

The tenant applies to cancel a one month Notice to End Tenancy given alleging cause, namely that the tenant's aged Labrador dog is repeatedly attacking other people in this manufactured home park.

The tenant is the tenant of two separate manufactured home sites in the park in question. He occupies one. Ms. KK resides in a manufactured home on the other. The Notice in question has been issued for both sites. In response, the tenant has brought this application regarding site #10 and a second application (shown as related file #1 on the cover page of this decision) regarding site #25. The parties agree that the two matters should be heard together today.

It was apparent at this hearing that the substance of the Notice in question was the subject of an earlier hearing (related file #2 shown on cover page of this decision). In that matter the landlord was seeking an early end to the tenancies based on the same allegations as contained in the Notice in question here.

At a hearing on July 12, 2017 the arbitrator having conduct of that hearing heard the landlord's evidence in support of the allegation that the tenant poses an immediate and severe risk to other occupants and the landlord due to an "aggressive attacking dog" who had bitten other residents of the park. The arbitrator heard the tenant's response to that evidence and made a decision preferring the landlord's evidence over the tenant's. However, the arbitrator found insufficient reason to end the tenancy earlier than provided for in the Notice and so the landlord's application(s) was dismissed.

Section 56 of the *Residential Tenancy Act* (the "Act") dealing with early termination applications provides:

Application for order ending tenancy early

56 (1) A landlord may make an application for dispute resolution to request an order

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and

(b) granting the landlord an order of possession in respect of the rental unit.

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

(iii) put the landlord's property at significant risk;

(iv) engaged in illegal activity that

(A) has caused or is likely to cause damage to the landlord's property,

(B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property, and

(b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

It is apparent that the arbitrator in the earlier hearing made a finding under ss. 2(a) in favour of the landlord but determined the landlord had not satisfied the requirements of ss. 2(b). The arbitrator would not have considered ss. 2(b), the reasonableness of shortening the one month notice period, unless he had made a finding in favour of the landlord under ss. 2(a).

As a result, the issue of whether or not the landlord had reasonable grounds to issue the one month Notice is an issue that has already been determined between these parties. There is no power in an arbitrator to reconsider or overturn that decision..

The tenant's advocate Ms. K.K. makes the strong argument that I should reconsider the issue of cause because the previous arbitrator declined to consider evidence submitted by the tenant under this file number that pertained to the issue of cause. That is not a

matter this arbitrator can deal with either. If the tenant holds the view that the previous arbitrator misconducted the hearing or failed to consider evidence that he should have, or that the process resulted in unfairness, then the tenant must pursue a review or appeal from that decision. It cannot be corrected at this hearing.

In result, the tenant's application to cancel the one month Notice to End Tenancy in this matter and in related file #1 must be dismissed.

By operation of s. 55 of the *Act*, an order of possession must issue to the landlord in these circumstances. Having regard to all the circumstances, including the fact that the landlord is an aged man in ill health with an old dog, that he has been living in this park for decades without incident, that he will be required to remove or sell two manufactured homes in this park, that the local government for the area has a dog control bylaw and that the matter can be quickly resolved by the removal of the dog, I set the order of possession date for December 1, 2018. The tenant will be required to pay occupation rent until the sites have been vacated.

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 14, 2018

Residential Tenancy Branch