



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution (the Application) pursuant to the *Manufactured Home Park Tenancy Act* for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 40; and
- an order to suspend or set conditions on the landlord's right to enter the site pursuant to section 63.

The landlord's agent (the landlord), the tenant and an occupant of the rental unit attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

While I have turned my mind to all the documentary evidence, including the testimony of both parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application and the tenant's evidentiary package which were personally served on July 19, 2018. In accordance with sections 81 and 82 of the *Act*, I find the landlord is duly served with the Application and the tenant's evidentiary package.

The tenant acknowledged receipt of the landlord's evidence sent by way of registered mail on August 31, 2018. In accordance with section 81 of the *Act*, I find the tenant is duly served with the landlord's evidence.

The tenant testified that they received the One Month Notice, which was personally served to them on July 09, 2018. In accordance with section 81 of the Act, I find that the tenant is duly served with the One Month Notice on July 09, 2018.

Issues(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for landlord's use?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the site?

Background and Evidence

The tenant and the landlord agreed that testified that this tenancy commenced on October 15, 2009, with a current monthly rent of \$358.00, due on the first day of each month.

A copy of the signed One Month Notice dated July 09, 2018, with an effective date of August 10, 2018, was provided in evidence by the tenant. The reasons indicated on the One Month Notice are:

Tenant or a person permitted on the property by the tenant has 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.

In the Details of Causes section of the One Month Notice the landlord has indicated:

Tenant has been illegally growing Cannabis plants since June 04, 2018. A verbal request to remove the plants has been ignored by the tenant. On July 05, 2018, the landlord counted 11 Cannabis plants visible from the adjacent site.

The tenant also provided in documentary evidence:

- a copy of a letter dated February 21, 2018, from a medical professional stating that the tenant's conditions may benefit from cannabis; and

- copies of witness statements from two different occupants of different sites in the park indicating that they have no issues with the tenant and support the tenancy.

The landlord provided in documentary evidence

- pictures of different cannabis plants on the tenant's site, with one showing an extension cord leading to the shed;
- a copy of a written statement dated July 26, 2018, from the tenant indicating that the cannabis plants are not hers; and
- a picture of a tall fence.

The landlord testified that they gave the tenants verbal notice to remove cannabis plants from the site but that the tenant did not comply. The landlord stated that there were 11 cannabis plants in plain view as of July 08, 2018, and that the One Month Notice was served to the tenant on July 09, 2018. The landlord submitted that the cannabis plants on the property voids the insurance for the manufactured home park which puts the landlord at significant risk.

The landlord also indicated that there is an illegal shed on the property with large amounts of wood and unsightly items. The landlord noted that the shed is in violation of park rules and is a fire hazard. Finally, the landlord stated that the occupant repeatedly lights fires and urinates in the backyard of the site which is why the neighbouring site put up a tall fence between the sites.

The tenant stated that they feel that the One Month Notice is being given to them more for personal feelings of the landlord than for the cause noted on the One Month Notice. The tenant submitted that all of the cannabis plants have been removed from the site.

The occupant testified that they thought that cannabis was going to be legal soon so he did not see any issue at the time but confirmed that the cannabis plants have been removed from the site. The occupant submitted that the cable that goes to the shed is for the freezer and that the illegal shed is actually just an extension of the shed already in place. The occupant stated that he wants to clean up the site and re-do skirting on the manufactured home if the tenancy continues and they do not feel that they are going to be evicted in the future.

The occupant stated that the neighbour put up the fence because they wanted more privacy but admitted to urinating in the compost. The occupant submitted that they do not use the fire pit anymore as they have a propane option for a fire pit now. The

occupant submitted that they will accommodate all reasonable requests from the landlord.

The landlord was not able to confirm whether the plants had been removed.

Analysis

Section 40 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 40 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on July 19, 2018, and since I have found that the One Month Notice was served to the tenant on July 09, 2018, I find that the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

Regarding the shed and other issues that the landlord has referred to in their testimony, other than the cannabis plants, I find that the landlord did not clearly indicate those items as reasons for ending the tenancy on the One Month Notice in the Details of Cause. For this reason I find that the tenant may be prejudiced by the consideration of these issues as they did not know that they were responding to it in the One Month Notice. I note that if the landlord has determined that the tenant is in breach of a material term of their tenancy agreement, they may refer to Residential Tenancy Policy Guideline # 8 regarding material terms.

I find the landlord bears the burden to prove that the tenant or a person permitted on the property has put the landlord's property at significant risk and that the tenant or a person permitted on the property 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.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed the evidence and testimony and I find the landlord has not provided sufficient evidence that the tenant or the occupant has put the property at significant

risk. Although the landlord states that their insurance is void due to the presence of the cannabis plants, I find that they have not provided any actual documentary evidence to support this statement such as a statement from their insurance provider or a copy of the highlighted section of their insurance policy which states that the insurance is void based on cannabis plants being on the site. I further find that the landlord has not demonstrated that the extension cord to the shed is a significant risk or provided any clear evidence of electrical work requiring a permit in the shed as the picture provided is from a distance.

I find that I am not able to determine whether the tenant the cannabis plants were there illegally, however, it is not enough that they are illegal; the landlord also has to prove that they have adversely affected another occupant. I find that the landlord has not sufficiently demonstrated how the cannabis plants have adversely affected the quiet enjoyment, safety or physical well-being of another occupant. If the landlord is referring to themselves as being adversely affected, I find that they have not demonstrated this other than the risk of insurance liability which I have found that the landlord has not proven. I find that the landlord has not provided any witness statements from other occupants to state that they have been adversely affected by the cannabis plants.

In addition, as the landlord was not able to confirm otherwise, I accept the tenant and the occupant's testimony that they have removed the cannabis plants from the site and there is no present issue with the cannabis plants on the site.

For the reasons above, I find the landlord has insufficient grounds to issue the One Month Notice and to end this tenancy for cause.

Therefore, the One Month Notice dated July 09 2018, is set aside and this tenancy continues until it is ended in accordance with the *Act*.

Regarding the tenant's request to suspend or set conditions on the landlord's right to enter the site, I find that the tenant has not demonstrated that the landlord has made any attempt to unreasonably access the site or given notices of entry in an unreasonable manner. I find that all pictures taken appear to be from outside of the site.

For the above reason, I dismiss the Application for an order to suspend or set conditions on the landlord's right to enter the site, with leave to reapply.

Conclusion

The One Month Notice dated July 09, 2018, is cancelled and of no force or effect.

This tenancy continues until 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: September 20, 2018

Residential Tenancy Branch