



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding OAKDALE MOBILE HOME PARK LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenants requesting a cancellation of the One Month Notice to End Tenancy For Cause.

The Landlord owner and property manager each appeared for the scheduled hearing on behalf of the Landlord. Both Tenants and their advocate also appeared for the hearing. The Landlord had three witnesses standing by, one of which testified at the hearing (“SN”). Neither party raised a concern about the service of the Notice of Hearing or evidence that was submitted by the parties. The Tenant stated that she submitted evidence past the deadline provided for in the Residential Tenancy Branch’s Rules of Procedure (rule 3.14), however, the Landlord states that there was no concern, as there was opportunity to respond to it during the course of the hearing. Accordingly, I have considered the evidence that the Tenants submitted late.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing, within the scheduled time allotted.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Are the Tenants entitled to a cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 40 of the Manufactured Home Park Tenancy Act (“Act”)?

If not, is the Landlord entitled to an Order of Possession pursuant to section 48 of the Act?

Background and Evidence

The Tenant and her father own a trailer which sits in the Landlord’s manufactured home park. The Tenants and Landlord entered into an agreement dated April 1, 2016 to rent the site, and the month-to-

month payment is currently \$493.91, payable on the 1st of each month. A copy of the agreement was submitted into evidence. Paragraph 7 of that agreement states that *"the tenant or the tenant's guests must not disturb, harass, or annoy another occupant of the Park, the Landlord or a neighboring property."*

The Landlord testified about receiving numerous complaints from the tenants' committee and neighbors since the tenancy began. The complaints are generally:

- Excessive noise, including fighting, bickering, equipment being used at night, doors being slammed, cars coming and going
- Excessive debris in the yard, including garbage, household items and construction materials
- Parking cars in areas not approved for parking
- Tenants not complying with written park rules regarding "quiet times"
- Guests speeding through the park, being aggressive when approached

The Landlord provided several written warnings to the Tenants and copies of letters dated November 7, 2016, September 2017, July 2017 and March 2018 were submitted into evidence. The Landlord states she also sent a final letter on June 24, 2018 reminding the Tenants to abide by the rules and the quiet time in the park. The park manager states that a guest of the Tenants has been aggressive with him and residents, when asked to abide by the park rules; an email from a former neighbor confirms this. The neighbor expressed concern that there may be drug deals happening, with "deliveries" appearing to occur several times a day to the Tenants' home and a camera having been installed by the Tenants to monitor the area.

One sample of the written complaints from a neighbor is reproduced below:

"If I look out my windows all I see is junk. Broken items, papers, dishsoap, just garbage which is strewn all over the yard. If I am in my backyard..all I see is a hoarders back yard. Furniture, Coffee pots, broken items all over the place. Every window facing their home is greeted with a disgusting mess each time you look out the window or open the curtains.

The fighting. It's pretty regular...at least every second day. Yelling, swearing, banging, cars screeching out of here. I have called the police 3 times in two years that they have lived here.

The noise. (tenant's name redacted) has been known to be outside at 11:00 or later using his grinder. He putters in the back yard..moving things around..and I find it difficult to sleep.

I have grown to dislike where I live..there is no quality of enjoyment when there is a steady onslaught of noise, yelling, or seeing a constant barrage of junk. I deserve to live with peace, and enjoyment."

The Landlord states that most times, the Tenants clean up the yard after a warning is delivered, but that it soon resumes its previous state and complaints are received once more. The Landlord states that the neighbor across the street sold his place and moved, frustrated with the situation; that the neighbor directly beside the Tenants is at "wit's end" in dealing with the mess and noise; that police have been contacted by residents on several occasions; and that a rat was seen in the park, likely due to debris piling up.

The Landlord states that other residents are also receiving reminders and notices to clean up their property and yard, but that these Tenants are being asked to vacate because the problems have been going on for two years and the complaints have escalated; the Landlord states that although the yard may be temporarily cleaned up, within a short time there is junk and debris piling up as high as the roof.

Copies of emails and letters from neighbors with complaints against the Tenants were submitted into evidence, along with photographs showing the condition of the Tenants' yard.

A One Month Notice to End Tenancy for Cause was served on the Tenants by posting it on the Tenants' door on August 3, 2018; it had a stated effective date of September 3, 2018. The reasons noted were as follows:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The Landlord's witness, SN, confirmed the receipt of many verbal and written complaints about noise, disturbances, parking on the lawn, and debris in the yard over the last two years. She is the president of the tenants' committee and has also walked past the Tenants' residence and witnessed these concerns in person. She indicated that since the eviction notice was served, the yard is in slightly better condition, but that the magnitude and volume of complaints justifies a termination of the tenancy.

The Tenants replied by submitting statements and recent photographs dated September of 2018 showing that they have cleaned up the yard and that it is in good condition. She states that there are four young children there on weekends and that they play with toys outside, but these are stored at the end of the day. She states that the neighbor had never expressed concerns of any significance to her and that they got along well. She suggests that the neighbor across the road was renovating and selling his unit and that he did not leave due to disturbances, although she admits they constructed a tall wall to build privacy between the two as she was concerned he was photographing and videotaping her and the children. She claims that police came on three occasions and appeared confused as to why they were called to investigate, and no charges were laid. The Tenant states permission was given for them to work on the siding for the trailer and to construct a fence, and that alterations were made when the committee asked them to lower the fence height. She has never seen a rat in the area. Other residents in the area have construction materials lying around, park on the grass, and do not obey the park rules; the Tenant feels she is being targeted specifically. She states that there is not an excessive number of people coming and going, citing her mother, step sister and father as occasional visitors to the park site.

The Landlord indicated that it would like an Order of Possession as the warning letters and complaints only seem to manage the problem on a very temporary basis. She states that in 29 years of running the park, she has never seen this volume of complaints and has never resorted to an eviction. She is unwilling to offer more opportunity to the Tenants.

Analysis

The Tenants were served with the Notice to End Tenancy on August 3rd by posting it on the Tenants' door, which I find to be in compliance with section 81 of the Act. Section 82 deems service to be completed on the 3rd day after posting, which is August 6, 2018.

Under section 40, the Tenants have 10 days to file a dispute to the notice, otherwise they are deemed to have accepted the notice:

40 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*

(c) the tenant or a person permitted in the manufactured home park by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park,...

(e) the tenant or a person permitted in the manufactured home park by the tenant has caused extraordinary damage to a manufactured home site or the manufactured home park;...

(g) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

....

(2) *A notice under this section must end the tenancy effective on a date that is*

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) *A notice under this section must comply with section 45 [form and content of notice to end tenancy].*

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) *If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the manufactured home site by that date. [bolding added]

I have reviewed the Notice to End Tenancy and find that it complies with section 45 in form and in content. Section 45 requires the notice to be in writing, dated and signed by the landlord, give the address of the site, state the effective date and the grounds for ending the tenancy, all on an approved form. The Tenants disputed the notice on August 15, 2018, which is within the 10 days from date it was

received. Accordingly, I turn my attention to the merits of the notice and whether it is to be considered valid; the Landlord holds the burden of proving that the notice is justified, on a balance of probabilities.

Extraordinary damage:

I have considered the evidence of both parties and the photographs submitted and find that there is insufficient evidence that there was *extraordinary damage* to the park and/or site. The issue of garbage, junk and household items has been addressed, although it seems to slowly resurface as an issue over time; nevertheless, based on the evidence submitted, this cannot be viewed as “extraordinary damage” which would warrant an eviction under these circumstances.

Breach of Material Term:

The Landlord argued that the rules of the park were not being followed with respect to noise. I have considered the tenancy agreement and find that this is not a material term of the agreement. As per Policy Guideline #8 of the Residential Tenancy Branch, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the tenancy; an example is the payment of rent. I do not find the breach of the noise/quiet time provisions and occasional accumulation of debris in the yard to be a breach of a *material* term of the tenancy.

Significantly Interfered or Disturbed Others:

With respect to this item as a reason to end the tenancy, I find that the Landlord has provided compelling evidence that there is a concern about disturbances caused by the Tenants and/or their guests. The volume of complaints and the ongoing non-compliance with the noise and quiet time rules of the park have created a disturbance to others on a repeated basis, to the point where an eviction is warranted. In addition, the complaints about parking and cleanliness of the yard have not been rectified, even though there may be “short term” compliance by the Tenants. The problem resurfaces within a short period of time.

Under section 22 of the Act, the Landlord has an obligation to ensure that all residents in the park have quiet enjoyment, privacy and freedom from unreasonable disturbances. These rights must be balanced with the rights of the Tenants. I find that the Landlord has made reasonable attempts to resolve the issues and concerns of the residents by providing the Tenants with repeated warnings and chances to rectify the situation, and that it was left with no alternative but to serve the Notice to End Tenancy.

Accordingly, I find that the notice is valid and binding and the Tenants’ Application is dismissed. Under section 48 of the Act, an Order of Possession must be granted if a tenant’s application is dismissed:

48 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director *must grant to the landlord an order of possession* of the manufactured home site if

(a) the landlord's notice to end tenancy complies with section 45 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice. [bolding added]

Therefore, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Conclusion

The Tenants' Application is dismissed and the Landlord is granted an Order of Possession.

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: October 03, 2018

Residential Tenancy Branch