



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LITTLE ROCK RV PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This decision pertains to the tenant's application for dispute resolution made on August 20, 2018, under the *Manufactured Home Park Tenancy Act* (the “Act”). The tenant seeks to cancel a One Month Notice to End Tenancy for Cause (the “Notice”). The initial application was for an order to cancel another notice, but was then amended to address the Notice, which is the subject of this application.

The tenant, the landlord’s agent (referred to as the “landlord” hereafter), and a witness for the landlord attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issue of this application is considered in my decision.

I note that section 48 of the Act requires that when a tenant applies 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’s notice to end tenancy complies with the Act.

Issue to be Decided

Is the tenant entitled to a cancellation of the Notice?

Background and Evidence

The landlord testified that the tenant, who has lived in the park since 2013, accused an individual who was coming into the park (and who knows the landlord) of selling cocaine. As the tenant described him, "this man comes in on his Harley with a young girl on the back." These accusations, which took place in early August 2018, lead to a yelling match between the parties, and to the tenant threatening the life of the landlord. The landlord testified that that she was "scared for my life." In addition, the tenant allegedly was yelling all night, "24/7", and disturbing the other residents of the park.

On August 4, a brawl between the parties ensued, and the police attended after being contacted by nearby neighbours in an apartment building. Other residents of the park complained to the landlord about the fighting (of the tenant with her then-boyfriend), and about concerns they had with their children trying to sleep.

A witness for the landlord testified about a previous notice that had been provided to the tenant, but did not testify as to additional facts concerning the threats, fighting, or brawl.

As a result of the threats and other issues, the landlord issued the Notice on August 21, 2018, for an end of tenancy date of September 20, 2018. The notice was served by the landlord on the tenant, in person.

The grounds on which the Notice was issued include the following: (1) the tenant has allowed an unreasonable number of occupants in the unit/site; (2) the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, and seriously jeopardized the health or safety or lawful right of another occupant or the landlord; (3) the tenant or a person permitted on the property by the tenant has engaged in illegal activities that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant, and jeopardize a lawful right of interest of another occupant or the landlord; and, (4) the tenant has assigned or sublet the rental unit/site without the landlord's written consent. A copy of the Notice was submitted into evidence.

The tenant confirmed that she has been a tenant since 2013 and has "for the most part" been an outstanding tenant, and that she and the landlord were previously good friends. The tenant acknowledges that she was concerned about the individual coming into the park selling drugs, but adamantly maintained that she "never once threatened [the landlord] or her property. She testified that, yes, she did say in regard to the person selling cocaine that she "should punch his rotten teeth down his throat," but never

threatened the landlord.

While she acknowledges having had fights with her then-boyfriend from time to time, it was certainly not 24/7. She submitted that “from the bottom of my heart I never threatened her.” And, while the parties did get into a yelling match, there was never any threats levelled against the landlord. In support of her submission, she submitted into evidence a copy of a letter written by a friend, in which the friend states that he never saw the tenant threaten the landlord.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The Notice indicated that the landlord was ending the tenancy for several causes, pursuant to section 40 of the Act.

The parties’ testimony was diametrically opposed: the landlord testified that the tenant threatened her and that the tenant engaged in fighting on such a continuous basis as to interfere with others’ quiet enjoyment, while the tenant testified that she never threatened the landlord and that, while she may have fought from time to time with her boyfriend (as he then was), it was never to the amount that the landlord has suggested.

There is clearly bad blood between the landlord and the tenant, and what was once a friendship has deteriorated into an unfortunate situation for all. The tenant has suffered some tremendous loss in her life, and the landlord expressed sympathy for that loss.

When two parties to a dispute provide equally reasonable 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.* In this case, I find that the landlord has failed to provide sufficient evidence that the tenant either threatened her life or that she fought to the extent that the other tenants or neighbours were disturbed. The landlord did not call any witnesses regarding the threat, or any witnesses to the brawl, the noisy fighting, or any of the other issues that lead to

this matter ending up in arbitration. On the other hand, the tenant submitted into evidence a letter in support of her position, in which a third party states that he never observed the tenant threatening the landlord. And, while a single letter does not in and of itself make one party's version of events more believable than the other, the tenant's letter is the only piece of evidence beyond the testimony of the two parties that might establish what happened. As stated, the burden to prove the grounds on which the Notice was issued lies with the landlord, and without additional evidence in the form of witnesses or documentary evidence, I do not find that the landlord's account of the events is any more likely than the tenant's account of the events and circumstances.

Taking into consideration all of the evidence and testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the grounds on which the Notice was based.

Conclusion

The landlord's Notice, dated August 21, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 48 of the Act. This tenancy will continue until it is 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 Act.

Dated: October 5, 2018

Residential Tenancy Branch