



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act"). The tenant seeks an order cancelling a One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 40 of the Act.

A dispute resolution hearing was convened and the landlord's agent, a witness for the landlord, and the tenant attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are 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.

Issues to be Decided

1. Is the tenant entitled to an order cancelling the Notice?
2. If no, is the landlord entitled to an order of possession of the manufactured home site?

Background and Evidence

The landlord's agent (referred as the "landlord" herein for brevity) testified that the landlord issued the Notice was because of an assault by the tenant against another tenant of the park. The landlord witnessed the aftermath of the alleged assault, observing blood on the victim. The assault occurred on October 17, 2018. The victim of the assault has conveyed to the landlord that they do not feel safe. The victim—a neighbour of the tenant—has filed charges against the tenant.

The Notice, a copy of which was submitted into evidence, was served in-person on the tenant on October 24, 2018, by the landlord and his father. The grounds for the Notice are included on page two and state the following

October 17, 2018 - This tenant, [name redacted], physically attacked another tenant who was consequently diagnosed with a concussion, bruised ribs, and other injuries. The victim filed an assault charge with the RCMP. File #[file number redacted]." As explained by the landlord, the Notice was issued to protect the safety of the other tenants. Letters from witnesses at the scene were submitted into evidence.

Above that section of the Notice, the following grounds are checked off: (1) 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, and (2) 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.

One witness for the landlord, the husband of the victim of the assault, testified that on the date in question, he was inside the trailer while the tenant and the victim were outside, "arguing and pushing each other." He was not previously aware of the animosity between the two, but quickly became aware. Going outside, he observed his wife bleeding, and he stepped in between the two women in attempt to stop the ongoing fight.

The tenant then testified that this entire situation is "all pretty much new to me." She disputed the truth and veracity of the landlord's letters submitted into evidence, and stated that she "did not beat this person, and if I had, [then how is it] that my coat wasn't covered in blood?" While conceding that she did have a verbal fight with the neighbour after the neighbour called her a "rotten fucking cunt," she adamantly disputed that any

physical assault occurred. Further, she stated that she observed blood on the neighbour, but that she did not know how it got there. Finally, she explained that the other tenants in the park would not testify on her behalf as witnesses because of the fear of eviction. There are, as she further explained, lots of false accusations concerning the entire assault.

In rebuttal, the landlord said that “for some reason we’re being portrayed as dictatorial landlords evicting people left and right.” He feels for the tenant and described her as unstable and reactionary, with a problem controlling her temper. At the end of the day, he added, we “simply can’t have that kind of risk on the property.”

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. As described above, the specific grounds are section 40(c)(i) and (ii) and section 40(d)(ii) of the Act.

In this case, the landlord testified to witnessing the aftermath of an alleged assault by the tenant upon her neighbour. He observed blood. The landlord’s witness observed the pre-assault dispute between the tenant and his wife, and then a short time later saw his wife covered in blood. The neighbour has filed charges for assault cause bodily harm and the tenant had a court date on December 4, 2018.

The tenant disputes the landlord’s description of what happens, denying that any assault ever happened. However, she noted that the neighbour did in fact have blood on her, but the tenant did not know where the blood came from. I find this particular explanation to be suspect, and less than credible. The tenant did not call a single witness or provide a single statement from a witness that might raise a reasonable doubt that the assault on October 17, 2018, occurred. I find the witness statements submitted into evidence and the consistency of the testimony provided by the landlord and the neighbour’s husband to establish that an assault did, in fact, occur.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the

landlord has met the onus of proving the ground on which they issued the Notice under section 40 of the Act.

Given the above, I dismiss the tenant's application for an order to cancel the Notice, without leave to reapply. I further dismiss the tenant's application for compensation for recovery of the filing fee.

Section 48 of the Act states that (1) if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the arbitrator 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, and (b) the arbitrator dismisses the tenant's application or upholds the landlord's notice.

Having dismissed the tenant's application, and having reviewed the Notice and finding that it complies with section 45 of the Act, I therefore grant the landlord an order of possession of the manufactured home site.

Conclusion

I dismiss the tenant's application without leave to reapply.

I hereby grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, 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 Act.

Dated: December 7, 2018

Residential Tenancy Branch