



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Manufactured Home Park Tenancy Act* (the Act) to set aside a One Month Notice to End Tenancy For Cause (the Notice or Notice to End), dated December 01, 2018 with an automatically adjusted effective date of January 31, 2019.

Both the tenant and landlord attended the hearing. The landlord was represented solely by the owner of the home site, whom also attended a related hearing of this tenancy (as identified in the *style of cause page* or title page), in 2018 with their representative WM. Both parties respectively acknowledged exchange of all document evidence further submitted to me and that they had satisfactorily reviewed it and could respond to it. The parties were given opportunity to mutually resolve or settle their dispute to no avail. The hearing proceeded on the merits of the application. Both parties were given opportunity to present *relevant* evidence and provide *relevant* testimony in respect to the application and to fully participate in the conference call hearing and to present witnesses. Prior to concluding the hearing both parties acknowledged presenting all of the *relevant* evidence they wished to present.

Preliminary matters

The *style of cause* of this matter has been altered to correct the name of a respondent. As well, the parties agreed to amend the application and *style of cause* to include the name of the owner and landlord attending this matter.

Issue(s) to be Decided

Is there *sufficient cause* to end the tenancy?

Should the Notice to End in this matter be cancelled or upheld?

If the application is dismissed or the landlord's Notice upheld is the landlord entitled to an Order of Possession pursuant to Section 48(1) of the Act?

Background and Evidence

In this type of matter the burden of proof rests with the respondent landlord that they issued a Notice for sufficient cause. The *relevant* evidence in this matter is as follows. This tenancy started in 1995 and the payable monthly rent is \$408.00. On December 01, 2018 the landlord issued the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was issued for reasons pursuant to Section 40(1)(f)(g)(j) and(k) of the Act.

The landlord agreed that there has not been *damage* done to the home site (pad) requiring repair by the tenant pursuant to Section 40(f). The landlord also agreed that the tenant has not received an Order to Vacate from a governing body pursuant to Section 40(j). The landlord confirmed that the remaining reasons identified in the Notice to End pertain to their allegation of the tenant's failure to strictly comply with an Order of the Director dated September 05, 2018 (Arbitrator's Order) for the tenants to complete certain requests by the landlord by November 30, 2018, of repairs and maintenance of the home and home site as outlined in a letter of the landlord dated May 31, 2018. The landlord did not submit the May 31, 2018 letter, however submitted that which the letter asked the tenants to complete by a specified date, reproduced here from the landlord's evidence and the 2018 Decision:

- Repair the fence at the side of the home
- Remove all junk and garbage on the property
- Repair the shed, including installing a door
- Remove a plastic enclosure from the property
- Store boat and ATV appropriately
- Clean and paint the exterior of the manufactured home
- Keep grass mowed and do not park vehicles on grass
- Keep items on property tidy and organized, or remove them from the property
- Maintain home and property in accordance with the Manufactured Home Park Rules

On December 18, 2018 the landlord provided a series of 5 undated photo images to this proceeding claimed to have been taken on or near the date of the Notice to End, December 01, 2018. The landlord in attendance testified they were provided these images by another individual but have not personally viewed the home site in the near past and did not issue the Notice to End. The tenant disputed the photos accurately depict the home site on or near the date of the Notice to End.

It is undisputed that the hearing in 2018 identified that some items from the above list had already been completed. None the less, in respect to the Director's Order of September 05, 2018:

The landlord claims the tenant did not *repair the fence at the side of the home* by November 30, 2018. The tenant testified they repaired and repainted the fence as was Ordered. The landlord did not provide proof in support of their claim.

The landlord claims the tenant did *not remove all junk and garbage on the property* by November 30, 2018. The landlord provided a photo image of an aluminum boat with pieces of lumber adjacent to the boat, however testified they agreed with the tenant that the boat was indeed aptly and acceptably stored and the lumber removed. Another submitted image depicts an ATV beside and behind the home and a small tarped area, as well as a ladder erected to the roof of the home. The tenant testified they have been occupied by maintenance and upkeep of the home and site.

The landlord claims the tenant did not *repair the shed or installed a door to it* by November 30, 2018. The landlord provided a photo image depicting the claimed shed with a door affixed to the shed, albeit absent a door knob. The tenant testified they installed a door as was Ordered, albeit minus a door knob.

The landlord claims the tenant did not *remove a plastic enclosure from the property* by November 30, 2018. The landlord provided a photo image which depicts a large plastic enclosure at the rear of the home site. The tenant acknowledged the enclosure remains, but testified that in their recollection of the 2018 hearing the landlord's representative of the day WM, had testified that removal of the plastic enclosure was "off the table" and not important. The tenant testified that the landlord in today's hearing did not dispute the testimony of WM in the 2018 hearing. In today's hearing the landlord did not make comment or dispute the tenant's testimony in this regard. Rather, the landlord testified that removal of the plastic enclosure was an item ordered actioned by the 2018 Order of the Director, with which the tenant has not complied.

The landlord's claim is that the tenant did not *store their (aluminum) boat and ATV appropriately* by November 30, 2018. The landlord previously addressed the boat. The landlord's photo image, when taken, depicts that the ATV rested by the side of the home. The tenant acknowledged they use their ATV and that it is not within view from the front of the site when routinely stored.

The landlord's claim is that the tenant did not *clean and paint the exterior of the manufactured home* by November 30, 2018. The landlord's photo image depicts that the tenant has failed to paint a window frame and a door frame, which remain a different colour (green) than the remainder of the home (white). The tenant testified they have endeavoured to repaint *all* of the home the same colour including *all* frames, however ran out of time given the season and other obligations, including being a caregiver to his spouse.

The landlord does not dispute the tenant has *kept the grass mowed and that they do not park their vehicles on the grass*.

The landlord claims that the tenant is not *keeping items on the home site tidy and organized, or otherwise removed them from the property* by November 30, 2018. The landlord provided a photo image of a black boat trailer placed to the back and side of the home site adjacent to the shed. The tenant argued the boat trailer is placed to the side of the home site out of the way and is not unsightly or readily viewable by the rest of the Park. The landlord argued the boat trailer belongs in the landlord's storage compound away from the home site, which the tenant purported is not secure resulting in an exchange by the parties over security in the home park generally.

The landlord claims that the tenant, generally, is not maintaining the home and the site in accordance with the Home Park Rules. The landlord highlighted the Park Rules as identified in the Decision of 2018: *'The Tenant must maintain the Site, the landscaping and the home in good repair and in a neat, clean and sanitary condition'*.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

In this type of application, the burden of proof rests with the landlord to provide evidence that the Notice to End was issued for the stated reasons and altogether establishing *sufficient cause* to end the tenancy. I find it is clear the landlord's thrust in this matter, as reflected by their Notice to End, is that the tenant has not strictly and wholly complied with the Director's Order of September 05, 2018 to the letter of the Order so as to realize all the 9 bulleted items stated above.

I find the landlord's reliance on such arbitrary language as "tidy", "organized", "good repair", "clean", "neat", "sanitary" and "appropriately" may serve to point the tenant's

conduct in a certain direction, however I find these words are ambiguous and are unspecific targets with varying definitions and meanings. On preponderance of the evidence I find that while accepting the tenant may not have met the landlord's own satisfaction of these targets, I am satisfied by the landlord's evidence and that of the tenant that the tenant has aptly and sufficiently met a substantive portion of the targets imposed by the Director's Order of September 05, 2018. I find the evidence is that the tenant achieved reasonable tidiness, reasonable neatness, reasonable organization, reasonable cleanliness, reasonable repairs, and reasonably appropriate storage of items at issue.

None the less, I find the tenant failed to address removal of the plastic enclosure on the home site. In this respect I must ascertain on balance of probabilities the tenant's assertion they heard the owner's representative WM effectively 'waive' the landlord's request to remove the plastic enclosure, versus the landlord's lack of response to or denial of this occurrence in 2018 and in this hearing. I am mindful that the landlord of this hearing attended but did not participate in the 2018 hearing. In the absence of WM's involvement in today's hearing I find I am prepared to accept the tenant's lack of action on removing the plastic enclosure as a reasonable outcome, until today. I find that in itself, the tenant's version of events is not sufficient to ignore a key component of an Order of the Director.

None the less, as a result of all the above, I find that the tenant sufficiently complied with the Order of the Director dated September 05, 2018 in respect to 8 of the 9 points identified by the Order. As a result I find there is not *sufficient cause* identified by the landlord's Notice to End so as to end the tenancy. The Notice to End for Cause dated December 01, 2018 is **cancelled and of no effect** and the tenancy continues until it ends in accordance with the Act.

However, under the circumstances in this matter I find it reasonable to allow the tenant an ultimate opportunity to wholly comply with the Director's Order of 2018; and, with consideration of the season, for the tenant to remove the plastic enclosure from the home site as per my Order, as follows.

I Order that the tenant remove the large plastic enclosure identified on the home site by **no later than May 30, 2019**. If the tenant does not follow this Order by the prescribed date the landlord may issue a new Notice to End as per Section 40 of the Act.

The tenant has come perilously close to losing their tenancy and that failure to comply

with this latest Order may establish *sufficient cause* to end the tenancy.

Conclusion

The tenant's application is granted. The landlord's Notice to End dated December 01, 2019 is set aside and is of no effect. The tenancy continues. The tenant is given an Order in the above terms. The landlord is at liberty to issue a new Notice to End if they have evidence supporting *sufficient cause*.

This Decision is final and binding.

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: January 24, 2019

Residential Tenancy Branch