



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SEABREEZE MOBILE HOME
PARK and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for April 25, 2019. The hearing was adjourned due to lack of time to complete the hearing for the tenants' application to cancel the 1 Month Notice. Allowing the adjournment was necessary for both parties to be given a fair opportunity to be heard. I took in consideration the urgency of the matter, and a hearing was scheduled on an urgent basis at my earliest availability.

This hearing dealt with the tenants' application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 40; and
- authorization to recover the filing fee for this application, pursuant to section 65.

The landlord was represented by their counsel KH as well as the landlord's agent, HC, in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began on May 1, 1998. Monthly pad rental is currently set at \$455.00, payable on the first of the month. The applicants are tenants in a

manufactured home park for adults aged 55 and over. The manufactured home park consists of 156 pads, with approximately 350 tenants residing there.

This decision relates to the tenants' application for cancellation of a 1 Month Notice issued to the tenants.

The landlord submitted the notice to end tenancy providing two grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. 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 provided the following submissions for why the 1 Month Notice was issued. Although the landlord referenced several incidents that have caused them great concern, the primary reason the landlord had issued the 1 Month Notice, and is seeking the end of the tenancy is because of the behaviour of the tenant DG towards a neighbour in the manufactured home park.

The landlord's submission is that the tenant DG has continued to disturb the neighbours SB and LB, despite being warned not to do so. The disturbances include excessive noise, trespassing, intimidating and harassment, as well as disregarding SB and LB's right to privacy and quiet enjoyment of their living space.

The landlord provided documentary evidence outlining the chronology of the incidents that have taken place, which started in June of 2018. The landlord's agent HC received an email from the tenant SB on January 22, 2019 expressing her concerns about the tenants, their son, and their son's friends and guests. SB stated that she was fearful, and provided examples of behaviour that caused her great concern, which included the son's friends sitting against her car and rolling joints, parking their cars on her driveway, and participating in disturbing behaviour such as drinking and doing drugs. SB followed up with another email on January 25, 2019 informing HC that the tenants DG and RG had driven up to her window in an effort to bully and intimidate her.

On February 1, 2019, counsel for the landlord served the tenants with a formal warning letter. The letter, which was included in the landlord's evidence package, informed the tenants of the behaviour that had been reported to the landlord, and how this behaviour is contrary to the park rules, the tenancy agreement, and the *MHPTA*. The tenants were warned that a breach could be considered a breach of a material term of the tenancy agreement, and if the landlord continued to receive complaints about the same

behaviour the landlord would invoke their right issue a Notice to End Tenancy as allowed under the *Act*. The letter was served to the tenants by way of posting to the tenant's door, as indicated on the letter. The tenants dispute having received this letter from the landlord.

On February 26, 2019 the landlord issued the tenants a 1 Month Notice to End Tenancy for Cause as the landlord continued to receive complaints about the tenants' behaviour despite the issuance of the warning letter. This included an incident on February 9, 2019 where DG approached SG both at the ferry terminal as well as at the manufactured home park. The landlord submits that the behaviour has continued despite the issuance of the warning letter and the 1 Month Notice.

In support of the grounds provided on the 1 Month Notice, the landlord called witnesses to testify for this hearing including SB. SB testified that she had moved in on April 6, 2018, and lives next door to the tenants. SB testified that her husband is often away for work, and is alone for periods of a time. SB testified that she had documented several incidents that involve the tenants, which started back in June of 2018, and have continued even after the tenants were issued the 1 Month Notice and warning letter. SB testified that she had informed the tenants that she wanted to be left alone, but the tenants refuse give her the privacy and peace that she needs. SB testified that the unwanted attention has included "helpful" acts that she considered creepy, including mowing her lawn and salting her driveway. SB testified that she was afraid, and was further intimidated by the behaviour of the tenants' son and his friends.

SB testified that they often disturbed her by smoking, working on their vehicles outside her home, blocking her driveway, leaving garbage and unsightly junk around, and trying to intimidate her by refusing to acknowledge her request to be left alone. SB testified that they would trigger the motion sensor lights outside her unit on a daily and nightly basis.

SB's husband also testified in the hearing. SB testified that they had moved to this manufactured home park because of his wife's health. The tenants hoped to reside in a place where they could enjoy the quiet and calm lifestyle that they had anticipated as residents here. SB testified that early on they had expressed their wishes to be left alone, and DG replied that he understood their wishes. SB testified that despite this, the tenants have failed to respect their wishes. SB testified that although the tenants' neighbours have welcomed the assistance from the tenants, SB and his wife did not want the help, which included cutting the grass, blowing leaves, installing shingles on the stairs without their permission, and simply failing to leave them alone. SB testified

that things have actually gotten worse since they informed the landlord in writing, which included the confrontation at the ferry terminal. SB testified that despite his request for the tenants to leave them alone, DG was shovelling their driveway a few days later. SB and his wife are concerned that the tenants' apologies have meant nothing as the behaviour continued regardless of the number of verbal requests for them to stop, and regardless of the official warning letter sent by the landlord's counsel or the issuance of the 1 Month Notice.

LR also testified in this hearing, and is another tenant in the manufactured home park. LR testified that she was good friends with SB and her husband. LR testified that she was paying DG to assist her with the weed eating, and an incident took place in August of 2018 when DG was intoxicated, and had tried to hug her. LR testified that DG informed her that he has not had sex in years. In addition to this incident, LR expressed concern that the DG often swore, turned the volume for the television up too high, and failed to maintain the cleanliness of the yard.

HC, agent for the landlord also testified in this hearing. HC confirmed that she had received complaints about the tenants from other tenants in the manufactured home park, and that despite the warning letter issued to the tenants, they continued to disregard the park rules and tenancy agreement. HC testified to the fact that the tenants would put in great efforts to assist other residents, while neglecting the cleanliness and appearance of their own yard.

The tenants also called several witnesses in this hearing, including BP. BP testified that she considered the tenants to be great neighbours who helped out quite a bit by mowing the grass and shoveling the snow. BP testified that she had never observed the tenants drinking or intoxicated outside their home, nor has she witnessed any interaction between the tenants and SB.

CB testified in this hearing, and is another tenant in the manufactured home park. CB testified that the tenants were helpful neighbours who were always there, and it was welcome. CB testified that the tenants would assist her in cleaning her gutters, and she had never witnessed any interactions between SB and the tenants.

TS, another resident at the manufactured home park, testified that he had lived there since July 1, 2016, and have never witnessed the tenants scaring anyone, or looking into windows. TS testified that the tenants have helped him with snow removal as well as weed whacking. TS testified that he got along great with the tenants, and had no

issue with them. TS testified that his backyard was adjacent to the tenants, and that many of the driveways in the manufactured home park were shared, and there was no way around it.

The tenant DG testified in this hearing. DG testified that he had to shovel the snow as he had to work early in the morning, and needed to clear the driveway. DG testified that due to the layout of the driveway and common nature of the space, DG had to clear the driveway in order to get out. DG disputes that he had received any written warnings other than the one received several years ago in 2016.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 40 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenants may dispute the 1 Month Notice by filing an application for dispute resolution within ten days after the date the tenants receives the notice. The landlord served the tenants with the 1 Month Notice on February 26, 2019, and filed their application on March 7, 2019. As the tenants filed their application is within the time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, 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 Agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

In regards to the landlord's allegation that there has been a breach of a material term of the tenancy agreement, the tenants dispute the service of the warning letter from the landlord's counsel on February 1, 2019. The tenants testified that the last letter that they had received was one that was issued several years ago. Although I find the letter dated February 1, 2019 to be extremely clear about the expectations of the tenants, and the tenants' obligation to acknowledge and respect the concerns brought up in the letter, I find that the service of the letter was put into disrepute, and therefore the burden of proof is on the landlord to demonstrate that this letter was in fact served to the tenants. Despite the fact that the letter notes that it was served by way of posting on the tenants' door, I find that the landlord failed to provide sufficient proof of service to support that the tenants were in fact served with the letter. As the tenants are entitled to know the details of the breach in writing, and be given the opportunity to correct their behaviour, I find that the landlord had failed to provide sufficient evidence to support that they had received written warning, and accordingly I dismiss the landlord's request for the tenancy to end on the grounds of a breach of a material term of the tenancy agreement.

The landlord is also seeking the end of this tenancy on the grounds that the tenants have significantly interfered with or unreasonably disturbed the landlord or other occupants. I find that it is undisputed that the tenant DG had often provided assistance to other tenants of the manufactured home park by mowing their lawns, or clearing their driveways of snow. The tenants testified that due to the close proximity and layout of the homes and driveways in the manufactured home park, it is difficult to completely avoid contact with one's neighbours.

I accept the testimony of SB that despite her repeated requests for the tenants to leave her alone, DG continued to provide unwanted assistance such as snow removal. Although I accept DG's explanation that he had removed the snow in order to exit the

driveway, I find that DG failed to provide a reason for why he had installed the shingles on SB's stairs without their permission. I find that this took place after SB and her husband had clearly expressed their wishes to be left alone, and although several witnesses testified to the fact that they welcomed the assistance from DG, I find that DG did not respect the wishes of SB and her husband to be left alone. I find that this unwanted assistance, although helpful, was not requested by SB and her husband. I accept the testimony of SB and her husband that they had made it clear that they did not want any assistance from DG. I find that DG's deliberate refusal to stop performing such acts, regardless of their helpfulness, to be troubling, and the blatant nature of these acts demonstrate DG's disregard for the personal space and property of others who live in close proximity to him. I find that it is this blatant disregard that justifies the end of this tenancy on the grounds of unreasonable disturbance. Accordingly, I dismiss the tenants' application to cancel the 1 Month Notice without leave to reapply.

Section 48(1) of the *Act* reads as follows:

- 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 rental unit 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.

Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 48(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice. I find that the 1 Month Notice complies with section 48(1) of the *Act*. Accordingly, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the tenants were unsuccessful in this application, the tenants' application to recover the filing fee is dismissed without leave to reapply.

Conclusion

I dismiss the tenants' application without leave to reapply. I find that the landlord's 1 Month Notice dated February 26, 2019 to be valid, and complies with section 45 of the *Act*.

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed 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 *Manufactured Home Park Tenancy Act*.

Dated: July 5, 2019

Residential Tenancy Branch