



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KINGSSEN HOLDINGS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 40; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 55.

The landlord's agent (the "landlord"), the tenant, and the co-tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord was personally served with the tenant's application for dispute resolution on May 11, 2019. I find that the tenant's application for dispute resolution was served on the landlord in accordance with section 82 of the *Act*.

I note that Section 48 of the *Act* requires that when a tenant submits an Application 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 has issued a notice to end tenancy that is compliant with the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 40 of the *Act*?

2. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 55 of the *Act*?
3. If the tenant's application is dismissed and the landlord's Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 48 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in June of 2017 and is currently ongoing. Monthly rent in the amount of \$618.00 is payable on the third day of each month.

The landlord testified that the tenants were served with a One Month Notice to End Tenancy for Cause with an effective date of June 1, 2019 (the "One Month Notice") via registered mail. The landlord did not recall on what date he put the One Month Notice in the mail. The tenant confirmed receipt of the One Month Notice by June 29, 2019.

The One Month Notice states the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent.
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk.
- Tenant or a person permitted on the property by 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;
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The landlord testified that he wished to withdraw the following reason for ending the tenancy stated on the One Month Notice:

- Tenant or a person permitted on the property by 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;

Both parties agreed that the tenants were late paying rent on the following months:

- August 2018;
- September 2018;
- November 2018;
- December 2018; and
- January 2019.

The landlord testified that he has received lots of complaints from the tenants' neighbours regarding:

- the tenants parking their vehicles and the vehicles of their guests on the roadway resulting in other occupants' vehicles being blocked in;
- unlicensed vehicles being stored in the tenants' driveway;
- biker traffic generated by the tenants;
- unsightly junk accumulating in the tenants' yard; and
- disrespectful behaviour of the tenants.

In support of the above testimony the landlord entered into evidence five statements from other residents of the manufactured home park stating the above.

The tenants testified that they used to have some people staying with them and that these people caused a lot of problems and increased the traffic to and from the subject property. The tenants testified that after their last dispute resolution hearing, in which the tenants applied to cancel a One Month Notice to End Tenancy, the tenants kicked the troublesome people out. Both parties agreed that in the previous hearing, the parties settled their dispute and the tenancy continued. The tenants testified that after they kicked out their guests, the only traffic they generate is food and medicine deliveries.

The landlord testified that the tenants have received numerous notices to clean up their property and to remove their non-licensed vehicles from the driveway and have not complied. Six notices reflecting the above were entered into evidence.

The landlord testified that the above conduct is a breach of the manufactured home park rules which were entered into evidence. Rule C1 states in part:

Resident must maintain the home and homesite, its facilities and equipment, in good repair and in a neat, clean, sanitary and safe condition.

Park rule E 1. states in part:

A maximum of two vehicles may be parked on the Resident's home site (space permitting) but should not be overhanging on the street or landscaped areas or too tall to fit under the carport. Vehicles not in use are not permitted in the Park. Unlicensed vehicles are not permitted in the Park....

Park rule E. 4 states:

Guests pay parkin Resident's driveway, not on roadways.

The tenants testified that the parking situation is not their fault as they don't have a property driveway like other tenants. The tenants testified that they don't to block people in on purpose. The tenants testified that the subject property should have more parking space available to them and that they are hoping to rezone some of the manufactured home park to increase the parking available to them. The tenants testified that while one of the vehicles parked in their driveway is not in use, it has storage insurance.

The tenants testified that they are renovating the subject property and have been renovating the subject property since they purchased it in 2017. The tenants testified that they need to store their materials in their driveway as they do not have other places to put them. The tenants testified that they purchased used appliances for the subject property when they moved in and later got a good deal on new appliances and so the old appliances stayed on their porch because they did not have a vehicle to move the appliances for some time. The tenants testified that they moved the appliances as soon as they could.

The tenants testified that they feel like they are being singled out and bullied as other people have unlicensed cars and junk in their yards. The landlord testified that those other tenants have also received notices and that the next step will be hearings with the Residential Tenancy Branch.

Both parties agree that the landlord allowed the tenants to move a travel trailer into the lane behind the subject property so that the tenants could power wash it.

The tenant testified that he and witness D.M. were power washing the subject rental trailer on April 26, 2019 when he was called to the hospital to see his ailing son. Witness D.M. testified that after the tenant left he continued to wash the trailer and

noticed that there was some paint overspray on it that was not coming off with the power washer. Witness D.M. testified that he then retrieved a chemical called xylene from his property, which he testified is a type of paint thinner. Witness D.M. testified that xylene dissipates harmlessly in the air when used correctly but does have a pungent odor.

The tenant entered into evidence a word document which provides the following information on xylene:

Xylene is a cyclic hydrocarbon, and an environmental pollutant. It is also used in dyes, paints, polishes, medical technology and different industries as a solvent. Xylene easily vaporizes and divides by sunlight into other harmless chemicals.

Both parties agree to the following facts. A neighbour was concerned about the smell and called the police. The fire department and hazmat team arrived and cleaned up the area in which the xylene was used. The fire department was at the scene for approximately two hours.

Witness D.A. testified that when the fire department arrived the fire department tried to cancel the hazmat team but the hazmat team was already at the manufactured home park.

The landlord testified that xylene is not safe to use at the manufactured home park and that its use put the tenants of the manufactured home park at risk. The landlord testified that xylene is flammable and that other tenants of the manufactured home site informed him that one of the tenant's guests was smoking while it was being used. The landlord testified that this fire hazard put the health and safety of everyone in the park at risk.

The tenants testified that they were not aware that the xylene was being used. Co-tenant S.H. testified that a cigarette was not lit up until after the xylene was washed off the trailer which occurred just as the emergency personnel arrived on the scene. Witness D.M. testified that no-one lit a cigarette.

The tenants testified that the health of the other residents of the manufactured home park was not put in jeopardy and no-one was treated by the EMTs while they were at the manufactured home park.

The tenants testified that they are seeking an Order that the landlord comply with the *Act* because they believe the landlord has breached the *Privacy Act* by speaking to other residents about the tenants and about his intention to evict the tenants.

Witness D.W. testified that the landlord spoke to her about his intention to evict the tenants.

The landlord testified that he did not recall speaking to witness D.W. about the tenants.

Analysis

I find that the One Month Notice was served on the tenants in accordance with section 81 of the *Act*. I find that the One Month Notice meets the form and content requirements of section 45 of the *Act*.

Section 40(1)(a) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Residential Policy Guideline 38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

Based on the evidence of both parties I find that the tenants were late paying rent on the following months:

- August 2018;
- September 2018;
- November 2018;
- December 2018; and
- January 2019.

I therefore dismiss the tenant's application to cancel the One Month Notice without leave to reapply.

Section 48 of the *Act* states that 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.

Since I have dismissed the tenant's application and found that the One Month Notice complies with section 45 of the *Act*, I find that, pursuant to section 48 of the *Act*, the landlord is entitled to an Order of Possession effective June 30, 2019.

As I have found that this tenancy will end on June 30, 2019, pursuant to sections 40(1)(a) and 48 of the *Act*, I decline to consider whether or not the other reasons to end tenancy listed on the One Month Notice are valid.

Section 55(3) of the *Act* states that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement.

The tenants have alleged that the landlord has breached the *Privacy Act* and are seeking redress for this breach under section 55(3) of the *Act*. I find that section 55(3) of the *Act* only gives me authority to make Orders to give effect to the rights, obligations and prohibitions under the *Manufactured Home Park Tenancy Act*. I find that I do not have jurisdiction to make an Order regarding a breach of the *Privacy Act*. I therefore dismiss the tenant's claim under section 55 of the *Act* for lack of jurisdiction.

Conclusion

Pursuant to section 48 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on June 30, 2019**, which should be served on the tenant. Should the tenant 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: June 24, 2019

Residential Tenancy Branch