



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORT 4 HOMES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Manufactured Home Park Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

The Tenant and an advocate (the “Tenant”) were present for the hearing as were two agents for the Landlord (the “Landlord”). The Landlord also had two witnesses present at the start of the hearing who were asked to exit the hearing until time to present their witness testimony. However, the Landlord later decided to not call on any of their witnesses.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package but did not receive the package and the Tenant’s evidence until September 30, 2019. This was beyond the three days allowable under the *Residential Tenancy Branch Rules of Procedure* for service of the notice of hearing documents. However, the Landlord was provided the option to adjourn the hearing to allow more time for preparation or to continue as scheduled and they chose to continue with the hearing.

The Tenant confirmed that she served her evidence to the Landlord with the exception of the photos submitted to the Residential Tenancy Branch and stated that a petition submitted as evidence was served to the Landlord with two less signatures. The parties were informed that only the evidence served to the other party as well as submitted to the Residential Tenancy Branch will be accepted and considered in this decision.

The Tenant confirmed receipt of a copy of the Landlord’s evidence and did not bring up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy began in May 2008. Current rent in the amount of \$512.00 is due on the first day of each month.

The Landlord served the Tenant with a One Month Notice on August 6, 2019 by posting the notice on the Tenant's door. The Tenant was unsure as to the exact date of receipt but confirmed that the One Month Notice was received after being posted on her door.

A copy of the One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- 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
- 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 a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Further details were provided on the One Month Notice as follows:

Repeated disturbance - *yelling at children*
 - *fighting with other adults*
Allowing known criminal on property
Engaging in criminal behavior
Pet infraction

The Landlord provided testimony that the issues with the tenancy have been challenging and ongoing for many years. They stated that they receive many complaints regarding the Tenant, behaviour of the Tenant's children, and issues with the Tenant's pets.

The Landlord referenced their evidence submissions as proof of the ongoing issues that the Tenant has been made aware of. They submitted numerous emails, letters and warning letters provided to the Tenant regarding the Tenant's dog not complying with the park rules, guests of the Tenant's speeding on the property, the Tenant having unauthorized occupants in the home, garbage on the property, and police presence at the Tenant's home. The letters submitted date back from August 1, 2015 with a letter regarding neighbour complaints of an unleashed dog in the park.

The Landlord also submitted a log book from the community manager regarding incidents from September 26, 2018 to July 26, 2019 regarding issues with the dog, garbage on property, police attendance at the Tenant's home and behaviour of the Tenant's guests.

The Landlord stated that the Tenant has breached a material term of the tenancy agreement regarding her dog. They stated that Tenants must have written authorization to have a pet and that the Tenant never received authorization. However, they noted that their concern is not so much regarding an unauthorized dog, but instead that the Tenant is in breach of the rule that dogs must be leashed and under control in the park. They stated that the Tenant's dog has been seen unleashed and that there have been numerous complaints regarding dog feces on the property.

The Landlord submitted an email complaint from the Tenant's neighbour dated March 15, 2019 which states in part the following:

...her dog poops in my yard at the side of my house, she has dog poop all over her yard and its getting into my yard now and at back of my house.. some poop is deer poop... but most of it is dog poop I believe...maybe some cat...not sure but regardless its getting to be a nuisance.

In an email dated June 25, 2019 the manager advises the Tenant that a guest of the Tenant has a dog barking hysterically as well as an off-leash dog chasing the Tenant's dog who had escaped. In this email the Tenant was also reminded to pick up her dog's feces and to remind her children to respect their neighbours such as not bouncing balls off other homes.

In a warning letter dated July 2, 2019 the Tenant is notified to remove the pet from the site by August 15, 2019. The Landlord also submitted an email to the Tenant dated July 26, 2019 in which they advise the Tenant that they have continued to receive complaints regarding the Tenant "yelling loudly and aggressively at your children". In the email the Landlord states that if any more complaints are received the tenancy will be ended.

The Landlord submitted an email dated August 3, 2019 from a neighbor of the Tenant in which the neighbour reports that the Tenant had a guest staying for at least 5 days and that there was dog feces on her site from the Tenant and the guest's dogs.

The Landlord also submitted information from the courts regarding both the Tenant and a person they stated that the Tenant was seeking as an occupant at one point. The Landlord stated that they were unaware of the criminal information until they started looking, but they find that this creates a threat to other tenants. They also referenced police presence at the Tenant's site on a few occasions.

Regarding the condition of the property, the Landlord stated concern about garbage on the Tenant's property and submitted four photos of the property.

The Landlord also noted that the behaviour of the Tenant's children is cause for concern and that in 2018 one of the children jumped out and was hit by a car.

The Landlord also submitted evidence that is dated after issuance of the One Month Notice.

The Tenant provided testimony that police presence at her home in December 2016 was due to a medical emergency in which the police attended to ensure the safety of her children.

The Tenant also stated that the person with the criminal record as referenced by the Landlord was a relationship that ended three years ago and that this person has not

been on the property since. She also stated that she does not have a criminal record and referenced a letter from a probation officer submitted in her evidence dated August 16, 2019 which confirms this.

Regarding the claim of speeding in the park, the Tenant stated that a guest of hers sped one time, she spoke to the guest about this and it has not happened since.

The Tenant stated that she did not give permission to her children's father to leave garbage on the property but that she worked hard to get the items cleaned up. The Tenant submitted a letter dated October 3, 2019 from the father confirming that the Tenant had no knowledge of the items being left on the property and that they are being cleaned up.

Regarding the issues with the Tenant's dog, the Tenant stated that there have been times when the gate was left up and the dog got out without a leash. However, she stated that she has now made it so that the dog cannot escape so the issue should be resolved. She stated that she cleans up the dog feces right away after receiving warning about this issue and noted that there is deer and cat feces on the property as well. She questioned why the neighbours would assume that the feces they see is from her dogs.

The Tenant noted that her children play on the site and accidentally bumped the home next door while playing with a toy.

The Tenant submitted a petition signed by some of the other occupants of the manufactured home park and also submitted some character reference letters. The Landlord noted that the letters are not from occupants of the park and stated that the majority of complaints have come from the Tenant's direct neighbours, while the neighbours who signed the petition are not direct neighbours of the Tenant.

Analysis

The Landlord served the One Month Notice to the Tenant on August 6, 2019. As stated in Section 40(4) of the *Act*, a tenant has 10 days to dispute a One Month Notice. As the Tenant applied for dispute resolution on August 13, 2019, I find that she applied within the time allowable under the *Act*. Therefore, the matter before me is whether the reasons for the One Month Notice are valid.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The One Month Notice was served to the Tenant regarding significant interference or unreasonable disturbance of others, jeopardizing the health or safety of others, illegal activity and breach of a material term pursuant to Section 40(1) of the *Act*.

Regarding the claim of illegal activity, the Landlord referenced police attendance at the Tenant's home and provided information about criminal history for both the Tenant and a past guest of the Tenant. However, I do not find the criminal history information to be relevant as it does not establish that any illegal activity was occurring in the manufactured home park or related to the tenancy.

The Landlord noted that it puts the other occupants at risk, but I fail to find sufficient evidence to support this. I also do not find that police attendance at the home establishes illegal activity occurring in the home or on the property, particularly as the Tenant testified that the police attended with the ambulance during a medical emergency to ensure the safety of her children.

As such, I do not find that the Landlord has met the burden of proof regarding the Tenant engaging in illegal activity such that the quiet enjoyment, security, safety or physical well-being of others has been adversely affected.

Regarding the claim that the Tenant breached a material term of the tenancy agreement regarding pets, I refer to *Residential Tenancy Policy Guideline 8* which provides a definition of material term as follows:

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.

While the Landlord submitted warning letters dating back to 2015 regarding the Tenant's dog or dogs of the Tenant's guests, the Landlord provided testimony that their main concern is not that the Tenant has a dog without written approval. Instead, they emphasized their concern regarding dogs being off leash and the Tenant leaving dog feces without picking it up.

However, I note that some of the concerns regarding the dog date back to warning letters from 2015 which I do not find to support that this is a material term of the tenancy. If the Tenant was in breach of a material term, then the tenancy would have been ended in 2015 upon the first minor breach, as per the definition provided above.

I also find that there is insufficient evidence to support that the Tenant is not picking up dog feces. While the Landlord established that there have been complaints regarding this, the Tenant stated that following the first warning she picks up after her dog right away and stated that there are other animal feces on the property that may be mistaken for her dog. I find that some of the complaints submitted by the Landlord support this possibility given that in some instances the complainant describes possible deer or cat feces on the property as well and seems uncertain as to whether the issue is from the Tenant's dog.

As stated, I find that the Landlord has not established that issues with the Tenant's dog are a material term of the tenancy given that they testified as to breaches occurring over the past four years and a notice to end tenancy was not served until now. Therefore, I do not find that this was a valid reason for ending the tenancy.

Regarding the Landlord's claim that the Tenant is causing significant interference, unreasonable disturbance or seriously jeopardizing the health or safety of others, the Landlord provide testimony and evidence regarding the Tenant's and her children's behaviour. The Landlord also referenced the issues with the dogs as causing disturbance to others.

The Landlord provided warning letters to the Tenant regarding yelling on the property which seemed to have come from neighbour complaints. They also referenced the behaviour of the Tenant's children such as getting in the way of cars and hitting the neighbour's home while playing. However, the Tenant stated that the children play in the yard and accidentally threw a ball that hit the neighbour's home and referenced an incident when one of the children was hit by a car while playing.

When two parties to a dispute resolution proceeding provide differing but equally plausible testimony regarding the events that occurred, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim. In this matter, while I find that the incidents referenced may have causes some disturbance to others, I am not satisfied that the disturbance from the children is either ongoing and/or significant.

I also do not find evidence that issues with the Tenant yelling and swearing or issues with speeding by the Tenant or guest have been ongoing issues that were not resolved when the Tenant received warnings. The Landlord provided one warning letter to the Tenant regarding guests speeding dated March 8, 2018 and did not provide further testimony or evidence about speeding being an ongoing issue since that time.

The Landlord submitted a warning letter to the Tenant dated December 2, 2016 that advised the Tenant to not cause further disturbance, although no details of a disturbance were provided. The Landlord also submitted an email complaint and an email warning from May 2019 regarding the Tenant screaming at her children as well as an email from July 2019 about the Tenant yelling at the children.

I also note that the Landlord submitted an email from a neighbour dated August 3, 2019 which states that she no longer hears the Tenant yelling but reports that another neighbour has heard this, which I find to be an indirect account of what has occurred and therefore not relevant.

Upon review of the Landlord's evidence, I find that some of the warning letters provided to the Tenant do not include details of what has occurred. I also find it unclear as to whether the direct neighbours can hear day to day noises from the Tenant's home or whether the disturbance is unreasonable and therefore causing significant disturbance. However, without further evidence that would establish that the disturbance is significant, serious and/or unreasonable, I am not satisfied that it is and find it possible that the neighbours are hearing day to day noises from the Tenant and her children as testified to by the Tenant.

Regarding the Landlord's testimony of garbage on the Tenant's property, the Landlord submitted a warning letter and email both dated November 13, 2018 that garbage was on the site. The Landlord submitted four recent photos of the property, however I find that the photos alone do not establish that the condition of the yard is unruly and causing significant disturbance to others. No further evidence regarding the condition of the property was submitted into evidence and the Tenant provided testimony that there was garbage left on the property that was being cleaned up.

I also note that while the Landlord provided evidence of issues that occurred after service of the One Month Notice, I do not find this evidence to be relevant in determining if the One Month Notice served on August 6, 2019 is valid.

Accordingly, based on the above analysis, I do not find that the Landlord has met the burden of proof to establish, on a balance of probabilities, that the reasons for the One Month Notice are valid. The Tenant's application to cancel the One Month Notice is successful. The One Month Notice dated August 6, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The One Month Notice dated August 6, 2019 is cancelled and of no force or effect. This tenancy continues until 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 *Manufactured Home Park Tenancy Act*.

Dated: October 22, 2019

Residential Tenancy Branch