



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP
 OPC, FFL

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Manufactured Home Park Tenancy Act* (the “Act”). The Tenant applied to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”) and for an order for regular repairs to be completed. The Landlord applied for an Order of Possession based on the One Month Notice and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and an advocate (the “Tenant”) were present for the hearing as was the Landlord and a family member (the “Landlord”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the Tenant’s application as well as an initial package of evidence. The Tenant submitted additional evidence to the Residential Tenancy Branch a few days before the hearing and testified that this was posted on the Landlord’s door on November 6, 2019. The Landlord denied receipt of this second evidence package. As the evidence was not served within the timelines provided by the *Residential Tenancy Branch Rules of Procedure*, the late evidence from the Tenant is not accepted and will not be considered in this decision.

Although initially unsure as to what she received, the Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the Landlord’s application and a copy of the Landlord’s evidence. Neither party brought up any issues regarding service during the hearing.

All 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. Neither party called any witnesses.

Preliminary Matters

As stated by rule 2.3 of the *Rules of Procedure*, claims on an application must be related to each other and unrelated claims may be dismissed. Due to the urgent matter of a dispute over a notice to end tenancy, the hearing proceeded on this claim only and the Tenant's request for repairs is dismissed, with leave to reapply.

Issues to be Decided

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

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

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

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 that the tenancy began approximately two years ago, and that current monthly rent is \$520.00.

The Landlord testified that a One Month Notice was served to the Tenant in person on September 26, 2019. The Tenant confirmed receipt of the One Month Notice in person around this date.

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 engaged in illegal activity that has, or is likely to:
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant
 - Jeopardize a lawful right or interest of another occupant or the landlord
- Tenant has not done required repairs of damage to the unit/site

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order

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

As per RTB (file number) the tenant was ordered to remove all items outside the site area and clean up the site inside the site areas. I was ordered as landlord to restore WIFI and pay \$466 to the tenant, I have fulfilled my side of the court order but the tenant has ignored and continued increasing the amount of litter on her site and further expanded storing items outside her site area evidence file pictures prior to court order and as of September 2019 shows this clearly.

The Landlord referenced a previous dispute resolution decision that took place on May 4, 2019 for which the file number is included on the front page of this decision. The Landlord submitted page 9 of the previous decision dated May 11, 2019 in which the following is written:

I hereby order the tenant to not enter the landlord's or other sites in the manufactured home park unless she has written agreement from other tenants or the landlord. I hereby order the tenant to not contact the landlord's wife.

The Tenant submitted a copy of the full decision dated May 11, 2019 into evidence. In the conclusion, the following is written by the arbitrator regarding removal of items on the property:

I hereby order the tenant to remove her belongings that are outside her own site boundary line and if she retains any, to organize them inside her own site in a tidy manner.

The Landlord provided testimony regarding the reasons for the One Month Notice. He stated that he held up his responsibilities from the May 11, 2019 decision in that he restored WIFI access and the Tenant was paid \$466.00 as ordered in the decision.

The Landlord testified that the Tenant has not removed her belongings that were outside of the property lines of her site and actually has brought more items onto the property and onto the rental site. The Landlord also stated that the Tenant has contacted his wife which is also against the order in the previous decision.

The Landlord stated his concern regarding the Tenant causing issues with other residents. He stated that she constantly has verbal fights with other residents, threatens

the Landlord, spreads rumours and irritates others such as purposely sounding her car alarm.

Regarding the items on the property, the Landlord stated that the Tenant places items outside of her site lines such as Styrofoam that was placed in the bush, items on the road and generally just spreading her belongings everywhere. The Landlord stated that the Tenant was notified about the property lines but continues to not clean up and bring more items onto the property. He noted that the Tenant brought a bundle of pipes onto the property and also put up an extra fence panel to block view of the items.

The Landlord submitted photos which he stated shows the area of the Tenant's site and the items that are placed outside of the site such as an RV and a number of belongings at the back of the property. The Landlord also submitted into evidence a photo he stated was taken prior to the previous hearing in May 2019, one which shows items under an awning in front of the Tenant's home and another photo which the Landlord stated was taken September 2019 showing the area under the awning. The Landlord clarified that the items under the awning are on the Tenant's rental site while the other photos show items that are kept outside of the rental site.

The Landlord submitted six additional photos he stated were taken in September 2019 which show items on a grassy area including buckets, wood, a tarp, garden tools, what appears to be Styrofoam and many other items. The Landlord also submitted two photos taken from a drone above the rental site which he stated shows that the area outside of the Tenant's rental site has gotten worse since the last hearing regarding the number of items stored on the property.

The Landlord testified that the Tenant had until August 31, 2019 to tidy up the items on the property.

The Tenant provided testimony regarding ongoing issues she has had with the Landlord including issues with him coming into her space.

The Tenant stated that she currently has some skirting that was dropped off to install so as to help with the heating issues during the winter months but noted that it has not yet been installed. The Tenant stated that as there is no storage, she has been donating items or selling them at flea markets in an effort to clean up.

The Tenant stated that she does not get into fights with other residents. The Tenant also denied contact with the Landlord's wife and noted that rent is paid by e-transfer to his wife which requires contact with her by email.

The Tenant stated that the Landlord showed her the site lines when she moved in and provided photos showing the markers for the site lines. She stated that she has never seen a legal property line and noted that the Landlord's photos show arbitrary lines drawn on to divide the sites. The Tenant stated that she was never shown these photos when she moved in and that the Landlord seems to be changing the property lines.

The Tenant submitted that she is trying to organize the items and stated that the items under the awning in front of her home are within the site and placed there while she tries to organize. The Tenant stated that it has been difficult to find the energy and financial means to tidy up given the back to back evictions from the Landlord and resulting hearings that she has faced.

The Tenant stated her position that some of the Landlord's photos are old and not taken at the time as indicated by the Landlord. For example, she noted that some of the items shown in the Landlord's photos are no longer owned by her.

The Tenant stated that the items in question that may have been outside of the site lines have been removed since May 2019. She noted that there were flower pots placed near the street in July 2019 as she was giving them away for free.

The Landlord stated his position that the Tenant has constantly had excuses for not cleaning up despite the issue ongoing for two years. The Landlord stated that he had a survey done of the property and that the property line changed by about one metre from what he initially thought, but this did not change the lines of the rental sites.

The Tenant submitted into evidence over 100 pages of evidence including a number of written submissions, email and text message correspondence, documents from previous dispute resolution proceedings, and a number of photos. This includes a photo of the awning area on the rental site in which the Tenant wrote the following:

My space when not in midst of organizing.

The Tenant also submitted a photo of her home under which she wrote:

Little if any of my organizing of stuff, improving site etc. is visible to anyone as it is on other side of RV.

The parties were offered the opportunity to discuss settlement but were unable to reach an agreement.

Analysis

The parties agreed that the One Month Notice was served in person on or around September 26, 2019. As stated in Section 40(4) of the *Act*, a tenant has 10 days in which to apply to dispute a One Month Notice. As the Tenant filed the Application for Dispute Resolution on October 4, 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 *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 Landlord presented testimony regarding the Tenant fighting with other residents on the property and causing significant disturbance. However, the Tenant denied this, and I find insufficient evidence from the Landlord regarding this issue. Therefore, I do not find that this was a valid reason for ending the tenancy.

Due to insufficient evidence and opposing testimony from the Tenant, I am also not satisfied that the Tenant is causing disturbance or going against a previous order by having contact with the Landlord's wife.

The Landlord also claimed that the Tenant was in breach of a material term of the tenancy agreement. However, neither party submitted a copy of a written tenancy agreement and the Landlord did not reference a material term of the agreement that was breached. As such, I do not find that this was a valid reason for ending the tenancy as the Landlord did not establish that the parties were in agreement as to a material term of the tenancy agreement and that the Tenant was in breach of that material term.

The One Month Notice was also issued regarding illegal activity that has affected the quiet enjoyment of others as well as jeopardized the lawful right of others. However, during the hearing the Landlord did not present any testimony regarding illegal activity

and did not reference any evidence regarding illegal activities of the Tenant either. As such, I do not find this to be a valid reason for ending the tenancy.

While the One Month Notice also states that the Tenant has not completed repairs of damage to the rental site, the Landlord did not refer to any damage that the Tenant was to repair, and I do not find that the issue regarding cleaning up the property to be classified as damage to repair. Therefore, I also do not find this to be a valid reason for ending the tenancy.

Lastly, the One Month Notice was served to the Tenant regarding the Tenant's non-compliance with an order issued under the legislation which I find to be the main reason why the One Month Notice was issued based on the testimony of the Landlord. The decision dated May 11, 2019 ordered the Tenant as follows:

I hereby order the tenant to remove her belongings that are outside her own site boundary line and if she retains any, to organize them inside her own site in a tidy manner.

While the parties argued as to whether the property lines had changed, I do not find this to be the issue as the issue was regarding items found outside of the rental site boundary lines as well as the organization of items on the Tenant's rental site. Although the Tenant also stated that the boundary lines of the rental site had changed since the tenancy started, the parties were in agreement that the area under the awning as shown in photos submitted by both parties was on the Tenant's rental site.

Although the Conclusion section of the previous decision did not include a date as to when the Tenant was to have her belongings cleaned up from outside of the site lines, the Analysis section of the May 11, 2019 decision states the following:

I find the weight of the evidence is that the tenant has excess belongings that infringe on other sites and overcrowd her own site as illustrated by the photographs and survey in evidence. I find this situation is causing problems for her, for the landlord and other tenants. She has had over one and a half years to remedy the situation and promises to get rid of her excess belongings by August 31, 2019 which will hopefully lower tensions in the park.

The Landlord provided testimony that the Tenant was to have the work completed by August 31, 2019. Section 40(1)(k) of the *Act* states the following regarding ending the tenancy due to non-compliance with an order:

(k) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

- (i) the date the tenant receives the order;
- (ii) the date specified in the order for the tenant to comply with the order.

However, I do not find that the Tenant was ordered to complete by August 31, 2019 and instead that no timeframe was provided in the conclusion of the May 11, 2019 decision. Therefore, I find that more than 30 days has passed since issuance of that order.

While the Tenant provided testimony that she has moved all of her belongings inside of the rental site lines, she also provided testimony that she is working on organizing everything and that she has no energy or financial means to tidy up due to actions of the Landlord regarding service of notices to end the tenancy. Regardless of whether the tidying up referenced by the Tenant is regarding belongings outside of the rental site boundary lines or regarding the items that the Tenant claimed she brought into the boundaries of the rental site, I find that if the organization is not complete then the Tenant is not in compliance with the previous order of May 11, 2019.

As stated in the decision of that date, the Tenant was to bring her belongings into her rental site **and** to organize them in a tidy manner. I find that the testimony of both parties supports the Landlord's claim that both of these actions have not been completed.

The Tenant submitted a significant amount of documentary evidence. However, I found much of the evidence was not relevant as it related to past dispute resolution proceedings and provided information regarding the actions of the Landlord and/or other residents on the property.

However, I find the photo evidence submitted by the Landlord to support his testimony that the Tenant has not complied with the May 11, 2019 order. The Landlord submitted photos of the property and site prior to the previous hearing as well as photos of outside the rental site and within the rental site that he stated were taken in September 2019. Although the Tenant questioned the date the photos were taken, I accept the photos and find no evidence before me to establish that they were not taken on the date as stated by the Landlord. I find that the photos show many items still outside of the Tenant's rental site as well as a significant number of items on the Tenant's rental site that appeared to be kept in an unorganized and untidy manner.

The Tenant submitted a photo of the area under the awning on her rental site which notes that the photo represents the area when she is not in the midst of organizing. Based on this written statement, I find that this is not a current photo of the area. She also submitted a photo of her home on which she noted that none of her organizing is visible as it is on the other side of her home, which would also indicate that the organizing is in progress and not yet complete.

I find that the order issued through the decision of May 11, 2019 was clear that the Tenant was to remove items from outside her site boundary lines as well as to organize the belongings inside of her site. I find sufficient evidence from the Landlord that establishes that this has not been completed and find some of the testimony and evidence from the Tenant to support this in particular her testimony regarding her ongoing efforts to tidy and organize, instead of this work already being completed.

I find that the Tenant had plenty of time to complete the work ordered on May 11, 2019 and find that it has still not been completed. Therefore, I find that the Tenant was not in compliance with the order of May 11, 2019 as noted by the Landlord as a reason for ending the Tenant on the One Month Notice, pursuant to Section 40(1)(k) of the *Act*.

Therefore, I find that for this reason, the One Month Notice is valid, and the tenancy must end. Accordingly, I dismiss the Tenant's application to cancel the One Month Notice. Upon review of the One Month Notice, I find that the form and content comply with Section 45 of the *Act*. Although I note that the effective end of tenancy date was incorrect, it would have corrected to October 31, 2019 pursuant to Section 46 of the *Act*. Therefore, pursuant to Section 48 of the *Act*, I award the Landlord an Order of Possession. As the effective date of the One Month Notice has since passed, I issue the Order of Possession effective November 30, 2019 at 1:00 pm.

As the Landlord was successful with the application for an Order of Possession, pursuant to Section 65 of the *Act* I award the recovery of the filing fee in the amount of \$100.00 and award a Monetary Order in this amount.

Conclusion

The Tenant's application is dismissed, without leave to reapply.

Pursuant to Section 48 of the *Act*, I grant an Order of Possession to the Landlord effective **November 30, 2019 at 1:00 pm**. This Order must 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.

Pursuant to Section 65 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$100.00** for recovery of the filing fee paid for the application. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: November 14, 2019

Residential Tenancy Branch