



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TIMBERLANDS PROPERTIES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with an application by the landlord under the *Manufactured Home Park Tenancy Act* (the *Act*) for the following:

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 48a.

DH attended as agent for the landlord ("the landlord"). The tenant attended. The hearing process was explained, and parties were given an opportunity to ask questions. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence.

The tenant acknowledged receipt of the landlord's Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find the landlord served the tenant in accordance with the Act.

Issue(s) to be Decided

Is the landlord entitled to the following:

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55.

Background and Evidence

The parties agreed the tenancy began on March 1, 2015. Rent is \$496.00 monthly. The landlord submitted a copy of the agreement.

The landlord has complained many times to the tenant. The primary complaints are about nighttime parties and loud noise to which the police have been called many times. The secondary complaint is about the poor condition of the unit especially regarding debris heaped outside. The landlord testified that the situation persists to this day.

The parties referred in their testimony to their participation in an arbitration on September 25, 2018. On that day, the arbitrator submitted a Decision reflecting a settlement reached between the parties. That matter also involved a One Month Notice for similar causes. The Decision is referenced on the front page.

As a result of continuation of problems with the tenant as set out above, the landlord testified that a One Month Notice was issued on August 14, 2019 with an effective day of September 30, 2019. The landlord testified that a copy was posted to the tenant's door on August 14, 2019 and asserted that service was thereby affected under section 90 three days later, that is on August 17, 2019. The landlord filed a Proof of Service and a copy of the Notice. The tenant denied receipt of the One Month Notice and submitted no clarifying explanation.

The One Month Notice sets out the causes for the issuance as follows:

1. Tenant or a person permitted on the property by the tenant has:
 - 1.1. significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - 2.1. adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
3. Tenant has not done required repairs of damage to the unit/site.
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
5. Tenant has assigned or sublet the rental unit/site without landlord's written consent.

Under the section “Details of Cause”, the landlord stated on the Notice, “Unauthorized occupant living in the mobile; Home work not completed that was requested by landlord (three written warnings given) and; unauthorized improvements done to the home.”

The Notice provides information to the tenant that the tenant has the right to dispute the Notice within 10 days of service; if the tenant does not dispute the notice, the tenant is presumed to accept the Notice and must move vacate the site.

The tenant did not dispute the Notice within the time period but attended

The landlord testified that the tenant has allowed loud parties which have frequently disturbed the tenant’s neighbours and resulted in the police being called numerous times to the site.

The landlord testified that the tenant’s site has unsightly items stored around it such as a “toilet, old rotten wood, buckets a dog kennel and old chairs”.

The landlord testified that three letters of warning were issued to the tenant on July 9, July 24 and August 8, 2019 warning the tenant that she was to stop harassment of neighbours, comply with occupancy rules and attend to site maintenance (landscaping, fencing and exterior cleanliness). The landlord testified that the tenant has not complied with the warning letters.

The tenant acknowledged receipt of one of the warning letters in July and the final warning letter of August 9, 2019. The tenant denied that the police were called because of noise and disturbance. She acknowledged that there were items in the site area, but said the problem was lack of access to the items caused by a neighbour’s fence that prevented cleaning up.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties in the 63-minute hearing, not all details of the parties’ submissions and arguments are reproduced here. The relevant and important aspects of the landlord’s claims and my findings are set out below.

Under section 83 of the Act, the tenant is deemed to have received the Notice 3 days after the Notice was posted to the tenant’s door, that is, on August 17, 2019. I accept

the landlord's testimony that the tenant was served as the testimony was supported by documentary evidence.

In reaching this conclusion, I acknowledge that the tenant denied receipt of the Notice. However, I prefer the landlord's evidence which was credible, organized and well presented. The landlord, a property manager, appeared well familiar with the tenant and provided coherent and believable testimony. I give more weight to the landlord's evidence than to the tenant's evidence. I find the landlord has met the burden of proof on a balance of probabilities.

Section 40(4) of the Act states that within 10 days of receiving a Notice to End Tenancy for Cause, a tenant may apply for dispute resolution. If the tenant fails to do so, then under section 42(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the tenant did not apply to dispute the Notice which I have found was served on her on August 17, 2019. Consequently, I find pursuant to section 48(2) of the Act that the landlord is entitled to an Order of Possession to take effect two days after service.

I find the Notice complied with section 45.

I further accept the landlord's testimony and find the landlord has met the burden of proof that the tenant has "significantly interfered with or unreasonably disturbed another occupant or the landlord" as alleged in ground 1 of the Notice. I accept the credible evidence of the landlord that loud parties frequently take place to which the police are called, the tenant has received three warnings, and the tenant has failed to remedy the situation.

As I have made a finding on this ground, I do not address the remaining grounds in the Notice.

Conclusion

I grant to the landlord an Order of Possession effective two days after service. A copy of the Order must be served on the tenant. The Order may be enforced in 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: December 03, 2019

Residential Tenancy Branch