



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 118437 BC LTD DBC SUNSHINE COAST RV and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, PSF, FFT

Introduction

This hearing originally convened on September 30, 2019 and was adjourned to December 10, 2019 due to time constraints. This decision should be read in conjunction with the Interim Decision dated September 30, 2019, arising out of the September 30, 2019 hearing. 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 (the "One Month Notice"), pursuant to section 40; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 65.

Owner P.J. and owner S.W. (the "landlords") and their park manager witness (the "park manager") attended the hearing. The tenant, his advocate, law students L.C. and A.M. attended the hearing. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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 One Month Notice is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue- Late Evidence

In the first hearing, the landlord's testified that they received an evidence package from the tenant on September 24, 2019, six days before the September 30, 2019 hearing.

The landlords testified that they have not had an opportunity to review and respond to the documents contained in that package.

The tenant's advocate testified that the evidence package was sent late because the tenant thought that evidence served on the landlords for previous hearings could be used for this hearing.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") states that evidence should be served on the respondent at least 14 days before the hearing.

In this case, the tenant served the landlords with evidence less than 14 days before the September 30, 2019 hearing and the landlords testified that at the time of the September 30, 2019 hearing, they had not had a chance to review and respond to the late evidence. While some time has passed since the September 30, 2019 hearing, I Ordered in my Interim Decision that no further evidence, including responding evidence from the landlord, was to be admitted. Based on the above, and pursuant to section 3.14 of the *Rules*, I exclude the tenant's late evidence.

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 recover the filing fee for this application from the landlord, pursuant to section 65 of the *Act*?
3. If the tenant's application is dismissed and the landlords' Notice to End Tenancy is upheld, are the landlords entitled to an Order of Possession, pursuant to section 48 of the *Act*?

Background/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 landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began sometime in 1992 and is currently ongoing. Monthly paid rent in the amount of \$350.00 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant to the landlord.

The landlord testified that on July 30, 2019 a One Month Notice to End Tenancy for Cause with an effective date of August 31, 2019 was posted on the tenant's door. The tenant confirmed receipt of the One Month Notice on July 30, 2019.

The One Month Notice stated the following 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:
 - damage the landlord's property;
 - 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.

I asked the landlords what illegal activity they allege the tenant committed. The landlords testified that they have received complaints from other residents about the tenant being verbally abusive. The landlord entered into evidence a signed letter from another tenant of the park. The letter states in part:

"I have had to endure drunken raving and aggressive behavior on far too many occasions to be tolerated any further. Last year after receiving permission from management to top some small trees adjacent to [the tenant's] residence [the tenant] threatened me with an axe....Every time I encounter [the tenant] on the property or road to property I am in fear that he is going to uncontrollably assault me."

The landlords testified that in addition to the tenant's threatening behavior, he has allowed the interior and exterior of his home to become a large refuse pile which smells and attracts unwanted vermin. The landlords testified that they have requested on numerous occasions for the tenant to clean his property and he has refused to do so. The landlords testified that from May 24, 2019 to June 24, 2019 they brought in a large garbage bin approximately 40 feet from the tenant's home to aid the tenant in cleaning his property. The landlord testified that the tenant did not use the garbage bin or clean the area outside of his home. The landlords entered into evidence a receipt for the garbage bin in the amount of \$664.49.

The landlords testified that the unsightly garbage pile is a health and safety issue for other residents of the subject rental property. The landlords entered into evidence three letters, two from other tenants and one from the property manager attesting to the large

garbage pile and the various vermin it attracts. The landlords entered into evidence photographs of the large garbage pile outside the tenant's home.

The tenant's advocate testified to the following facts. The pile of items outside of the tenant's home is not all garbage and that some of it is tools, old engine parts, and doors. The pile of old beer cans has been cleaned up. The park is in a wildlife corridor and it is not fair to blame the tenant's property for the presence of wildlife and flies. The tenant is aware that his property is messy and that he has to clean it up and that he is trying to do so. The tenant's advocate testified that the tenant was not physically able to use the garbage bin provided by the landlords and testified that the bin was also not close enough to the tenant's home to be useful.

The tenant's advocate testified that the neighbor alleging that the tenant threatened him with an axe is not being truthful and that it is that complainant who is the aggressor. The tenant testified that the neighbor threatened him with violence and he told the neighbor that he would "go and get his axe." The tenant's advocate testified that there are no police reports filed against the tenant. This was not disputed by the landlords.

The landlords testified that the large amount of debris left by the tenant on the pad has, from what the landlords can see, prevented the utility services from being properly maintained. The landlords testified that they cannot properly maintain the pad, utility and septic connections due to the debris which does not allow the landlords proper access.

The tenant testified that most of the small stuff on his property is being cleaned up. The tenant testified that he does not understand the hazard his accumulation of items could have to the septic or hydro connections.

The landlords entered into evidence the "Park Rules" and state that the tenant has breached the Park Rules by allowing refuse to collect on the site. The Park Rules state, in part, that the site must be clean at all times.

Both parties agree that on July 12, 2019 a letter from the landlords was delivered to the tenant. The July 12, 2019 letter was entered into evidence and states in part:

The management [of the park] have spoken with you directly many times in the past three months to advise you to clean up [your site]. They have also received multiple complaints from residents of neighboring sites complaining that your side is cluttered with garbage, is smelly, and is unsanitary....

We remind you that you are responsible for maintaining reasonable health, cleanliness and sanitary standards throughout your site....

Take notice that you have until July 26, 2019 to clean up [your site] and bring it back to reasonable health, cleanliness and sanitary standards and in compliance with the Park Rules...

If [your site] has not been cleaned up by July 26, 2019, my client will reserve the right to seek legal remedies.

Law student A.M. submitted that the July 12, 2019 letter from the landlords did not allege or mention that the items left on the site by the tenant were in any way damaging the site.

The park manager testified that:

- the condition of the subject rental site is bad because the tenant has refused to clean it up;
- the landlords brought the tenant a large garbage bin to assist the tenant in cleaning up his property, but the tenant refused to clean up the site;
- she feels threatened by the tenant when he comes to pay his rent because he yells at her and has told her “you’ll be sorry”;
- sites around the tenant remain empty because no one wants to live near the tenant’s garbage heap;
- the previous owners of the park tried to get the tenant to clean up but failed to do so; and
- the previous owners did not attempt to evict the tenant for his garbage accumulation.

The tenant’s advocate testified that the landlords are acting in bad faith and are only trying to evict the tenant because they do not want to compensate the tenant for the value of his manufactured home which cannot be moved. The tenant’s advocate testified that “everyone acknowledges that [the tenant] has a garbage problem” and that “[the tenant] is a bit of a slob” but that the landlords are only evicting the tenant for financial gain.

The landlords testified that they are acting in good faith and only served the tenant with the One Month Notice because he refused to clean up his site. The landlords testified

that prior to serving the tenant with the One Month Notice they spoke to him in person on numerous occasions asking him to clean up his site and followed up this request with a formal letter when the tenant did not comply. The landlords testified that the One Month Notice was issued after they provided the tenant with a large garbage container, at their own cost, which the tenant refused to use.

The landlords testified that the condition of the subject rental site is negatively affecting the landlords and the other tenants as the garbage pile stinks and attracts bears, racoons and rats.

Law student A.M. submitted that the landlord's request to for eviction sounds like a renoviction because the tenant has resided at the subject rental site for over 25 years and the landlords have tried on two previous occasions to remove the tenant. Law student A.M. testified that the purpose of the legislation is to protect vulnerable people such as the tenant.

Analysis

Upon review of the One Month Notice, I find that it meets the form and content requirements of the *Act*.

Section 40(1)(f) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant does not repair damage to the manufactured home site, as required under section 26 (3) [*obligations to repair and maintain*], within a reasonable time.

Section 26(3) of the *Act* states that a tenant must repair damage to the manufactured home site or common areas that is caused by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant.

Based on the testimony of both parties and the photographs entered into evidence, I find that the tenant has accumulated a large amount of refuse on the subject rental site. I find that the accumulation of refuse on the subject rental site has, or is more likely than not, to have caused damage to the subject rental site. I accept the landlords' testimony that the garbage pile attracts a variety of wild life including rodents which have a negative effect on the condition of the subject rental site.

I find that the tenant was required, pursuant to section 26(3) of the *Act*, to clean up the subject rental site and repair the damage to the site caused by the accumulation of refuse and the presence of rats and other animals.

I find that the landlord requested, in writing, the tenant to clean up the subject rental site in the letter dated July 12, 2019. I find that the landlord provided a reasonable timeline of two weeks for the clean up to take place. I find that the tenant failed to clean up the subject rental site within the two weeks set out in the July 12, 2019 letter. I therefore find that the landlords were entitled to issue the tenant the One Month Notice, pursuant to section 40(1)(f) of the *Act*, because the tenant failed to clean the subject rental site in accordance with section 26(3) of the *Act*, after the landlords requested he do so in writing.

Based on my above findings, I uphold the landlords' One Month Notice.

Section 55 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 52 [*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.

I find that since the One Month Notice complies with section 52 of the *Act* and I have upheld the One Month Notice, the landlords are entitled to an Order of Possession effective December 31, 2019.

I note that section 40 of the *Act* does not have a good faith provision such as that listed in section 42 of the *Act*. Nonetheless, I find that the landlords were acting in good faith in their attempts to assist the tenant to clean up the subject rental site. Prior to the July 12, 2019 letter, the landlords provided the tenant with a large garbage bin, at no cost to the tenant, to aid him in his cleaning endeavors. I find that the tenant's failure to clean up his site lead to the service of the One Month Notice. I find that the landlords did not act inappropriately in serving the tenant with the One Month Notice given the tenant's long-standing refusal to clean his site.

I also note that neither of the previous arbitrations were attempts by the landlords to evict the tenant and that the landlords have not previously issued a notice to end

tenancy to the tenant. In addition, I find that there is insufficient evidence to establish the tenant's claim that this was a renoviction.

Since I have found that the landlords are entitled to an Order of Possession under section 40(1)(f) of the *Act*, I decline to consider if the landlords are entitled to an Order of Possession under section 40(1)(d) of the *Act*.

As the tenant was not successful in his application, I find that he is not entitled to recover the \$100.00 filing fee from the landlords, pursuant to section 65 of the *Act*.

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 landlords effective at **1:00 p.m. on December 31, 2019**, which should be served on the tenant. Should the tenants 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: December 10, 2019

Residential Tenancy Branch