



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DANIEL PT HOMES LTD / CENNTENIAL VENTURES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

ET

Introduction

On January 10, 2020, the Landlord submitted an Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* ("the Act") for an early end of tenancy and an order of possession for the rental unit.

The matter was set for a conference call hearing. The Landlords and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant called into the teleconference hearing at 9:48 am; 18 minutes late. The Tenant testified that after he called into the hearing at 9:30 am he made contact with an operator who placed him into a sub conference. After a period of time, when nobody else attended the Tenant called the operator again and was placed into the hearing. I find that the Tenant was not at fault for being late, and the Tenant was provided with a summary of the proceedings up to the point where he attended.

The Tenant submitted that the Landlord served the Notice of Dispute Resolution Proceeding to an occupant of the manufactured home on January 14, 2020. The Tenant testified that he lives

out of province and he had provided the Landlord with a post office box address for service of documents. The Tenant testified that he received a call notifying him that the Landlord had served documents at the dispute address. The Tenant testified that he did not actually receive the Landlords' documents until January 17, 2020.

In reply, the Landlord confirmed that the Tenant provided him with a post office box in Alberta. The Landlord stated that there was a mix up; however, the Tenant received the Notice that was issued, so service should not be found to be an issue.

The Director of the Residential Tenancy Branch has established an expedited hearing process in circumstances where there is an imminent danger to the health, safety, or security of a Landlord or Tenant.

Section 64(2)(a) and (c) of the MHPTA allow the director to order that documents must be served in a manner the director considers necessary, despite the methods of service provided for in sections 81 and 82 of the MHPTA, and that a document not served in accordance with those sections is sufficiently given or served for purposes of the Act.

The Director Orders that pursuant to sections 64(2)(a) and (c) of the MHPTA, and subject to any further order made pursuant to those sections:

- 1. A party to an application for dispute resolution set down under Rule 10 of the rules of procedure for a hearing date that is between six and 11 days after the date the application is made must serve their materials*
 - a. by leaving a copy with the person,*
 - b. if the person is a landlord, by leaving a copy with an agent of the landlord, or*
 - c. if the person is a tenant, by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant.*

I find that the Landlords served the Notice of Dispute Resolution Proceeding to an adult person they believed to reside at the rental unit. While I accept that the Tenant is currently living out of province, the Tenant became aware that the documents were served at the rental site, and the Tenant received the documents three days prior to the hearing.

The Tenant fully participated in the hearing and raised no concern at the hearing that he did not have sufficient time to respond to, or prepare a response to, the allegations.

In the circumstances, I find that the Tenant was sufficiently served with notice of the hearing and I find that he was not prejudiced by the short period of time he had to respond to the Landlords' Notice and materials.

Background

The Landlord and Tenant testified that the Tenant purchased the manufactured home located in the park in 2014. The Tenant testified that he has lived elsewhere in the manufactured home park for many years prior. The parties testified that pad rent in the amount of \$279.00 is due by the first day of each month. The Landlords testified that they purchased the manufactured home park in June 2018 and they assumed all the existing tenancies.

The Landlord testified that the Tenant failed to pay the rent when it was due under the tenancy agreement for the months of July, August, and September 2019. The Landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served to the Tenant on October 10, 2019. The Landlord testified that the Tenant did not pay the outstanding amount of rent within five days and did not dispute the 10 Day Notice by applying for dispute resolution. The Landlord applied for dispute resolution by direct request on October 29, 2019 seeking an order of possession for the rental site.

The Landlord testified that a discrepancy with the Landlord's name on the tenancy agreement and the current name of the Landlord resulted in the Landlord's application being dismissed with leave to reapply.

The Landlord testified that on November 1, 2019 and November 29, 2019 payments were made towards the outstanding rent. The Landlord wrote the words "for use and occupancy only, does not reinstate the tenancy" on the rent receipts.

The Landlord testified that on December 20, 2019, the Tenants roommate made a payment of \$279.00 for January 2020 pad rent. The Landlord again wrote "for use and occupancy only, does not reinstate the tenancy" on the rent receipt.

The Landlord testified that on December 20, 2019, the Tenant, Mr. A.H. attended the Landlords office and was abusive. The Landlord testified that the Tenant got in close physical proximity of the secretary pointing his finger and causing the secretary to be terrified and call 911. The Landlord testified that the Tenant made threats of physical harm to the Landlord and continued to be verbally abusive. The Tenant was asked to leave the office and did so. The Landlord provided a statutory declaration of what transpired on December 20, 2019 from the office administrator and office administrator trainee of the Landlord.

The Landlord testified that later that day, at 2:00 pm the Tenant left a threatening message on the Landlords phone. The Landlord provided a copy of the message left by the Tenant. The Landlords provided an RCMP file number for the incident.

The Landlord testified that they were informed that the Tenant would be charged for uttering threats.

The Landlord testified that the Tenants physical threats present a real and present danger, so the Landlord has applied for an early end of tenancy rather than issuing the Tenant a One Month Notice to End Tenancy for Cause.

In response to the Landlords' testimony, the Tenant testified that he was living in a different province and some rent payments were missed. He testified that he believed he had made an agreement with the Landlord to catch up on rent payments. He testified that when he went to pay the Landlord, he was informed that it was too late. The Tenant testified that he then did not pay the outstanding rent to the Landlord because the Landlord filed against him.

The Tenant testified that the Landlord cannot accept rent payments without reinstating the tenancy. The Tenant testified that he made attempts to inform the Landlord that the Landlord cannot accept rent payments without reinstating the tenancy and that he was frustrated by the Landlords behaviour.

The Tenant provided testimony acknowledging that he attended the Landlords office on December 20, 2019. He testified that he was angry that the Landlord would not get back to him. He testified that he got a little upset when the person in the Landlords office got upset with him and tried to push him out the door. He testified that the police are not charging him with an offence.

The Tenant provided testimony acknowledging that he left a voice message on the Landlords phone. He testified that he was frustrated that the Landlord keeps putting "for use and occupancy" on the rent receipts. The Tenant stated that he is sorry for what he said to the Landlord.

In reply, the Landlord clarified that he informed the Tenant that if the Tenant paid the outstanding rent, the Landlord would reconsider ending the tenancy using the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord testified that the Tenant did not live up to his promise.

Analysis

Section 49 of the Act states that a Landlord may make an application for dispute resolution to request an order to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 40 [landlords notice: cause] and granting the Landlord an order of possession in respect of the manufactured home site. If an order is made under this section, it is unnecessary for the Landlord to give the Tenant a notice to end the tenancy.

Under section 49 (2) of the Act, the director may make an order specifying the date on which the tenancy ends and the effective date of the order of possession only if satisfied that

- (a) the tenant or a person permitted in the manufactured home park by the tenant has done any of the following:
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park;*
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
 - (iii) put the landlord's property at significant risk;*
 - (iv) engaged in illegal activity that*
 - (A) has caused or is likely to cause damage to the landlord's property,*
 - (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the manufactured home park, or*
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
 - (v) caused extraordinary damage to the manufactured home park, and*
 - (b) it would be unreasonable, or unfair to the landlord or other occupants of the manufactured home park, to wait for a notice to end the tenancy under section 40 [landlord's notice: cause] to take effect.*

Based on the testimony and documentary evidence before me I make the following findings:

An application for an early end of tenancy is reserved for situations where a Tenant poses an immediate and severe risk to the rental property, other occupants, or the Landlord. An application for an early end of tenancy is such that a Landlord does not have to follow the due process of ending a tenancy by issuing a notice to end tenancy which gives the Tenant the right to dispute the Notice by applying for dispute resolution.

I find that the Tenant was frustrated that the Landlord was writing "for use and occupancy only" on the rent receipts. The Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the rent was not paid within five days of the Tenant receiving the notice and the Tenant did not dispute the Notice. Section 55 of the Act permits the Landlord to apply for an order of possession in these circumstances and permits the Director to grant an order of permission.

I find that the Landlord pursued enforcement of the 10 Day Notice by applying for dispute resolution by direct request on November 5, 2019. The Landlord's application was dismissed with leave to reapply on November 8, 2019. I find that the Landlord was protecting his interest

of ending the tenancy by writing “for use and occupancy only” on the rent receipts in November and December. The Landlord has the right to reapply to dispute resolution to pursue enforcement of the 10 Day Notice, and the issue of whether or not the tenancy was reinstated by acceptance of rent, or by a failure of the Landlord to pursue enforcement of the 10 Day Notice by reapplying for dispute resolution in a timely manner can be determined by an Arbitrator at a future hearing.

I have reviewed the audio message left by the Tenant on the Landlords’ phone. The Tenants message indicates to me that he is frustrated by the Landlord. The Tenant states “...pull your head out of your ass and do what your supposed to do, or I am going to come knock your gold f***** tooth out...” The message also contains further inappropriate profanity.

While the Tenant’s behaviour on December 20, 2019 may rise to a level that is sufficient to end the tenancy, I have turned my mind to whether or not the it would be unreasonable, or unfair to the Landlord or other occupants of the manufactured home park, to wait for a notice to end the tenancy under section 40 [landlord's notice: cause] to take effect. An expedited hearing process is for circumstances where there is an imminent danger to the health, safety, or security of a Landlord or Tenant.

While I acknowledge that the Tenants behavior on December 20, 2019 occurred while he was in town, I am mindful that the Tenant lives out of province. I find that the Landlord has the right to write “for use and occupancy only” on the rent receipts. I find that the Tenant was frustrated by the Landlord use of these words and the Tenant was over -reacting to the situation. It appears that the Tenant received advice that the Landlord could not accept rent without reinstating the tenancy and the Tenant was frustrated with the lack of response by the Landlord on this issue. I find that the Tenant’s frustration escalated on December 20, 2019 when he attended the Landlords’ office.

I have considered the evidence of the Tenants behaviour and while I find it was extremely inappropriate, I find that there is insufficient evidence from the Landlord that the Tenant presents an imminent danger to the health, safety, or security of a Landlord or Tenant. I find that the comments left on the Landlords phone were made in the heat of the moment when the Tenants concerns were escalated. The Tenant apologized at the hearing for his inappropriate comments. There was no further evidence presented at the hearing that the Tenant has acted inappropriately towards the Landlord or other occupants of the manufactured home park since the incident of December 20, 2019.

I find that it would not be unreasonable, or unfair to the landlord or other occupants of the manufactured home park, to wait for a notice to end the tenancy under section 40 [landlord's notice: cause] to take effect.

Conclusion

I find that it would not be unreasonable, or unfair to the Landlord or other occupants of the residential property, to wait for a Notice to end the tenancy issued under section 40 of the Act to take effect.

The Landlords' application for an early end of tenancy and an order of possession for the rental site is dismissed.

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: January 21, 2020

Residential Tenancy Branch