



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 419710 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, FFT

Introduction

On December 20, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 40 of the *Manufactured Home Park Tenancy Act* (the “Act”), seeking monetary compensation pursuant to Section 60 of the *Act*, and seeking to recover the filing fee pursuant to Section 65 of the *Act*.

Both Tenants attended the hearing with B.L. attending as an advocate for the Tenants, and A.V. attending as a witness for the Tenants. The Landlord attended the hearing with N.S. attending as an agent for the Landlord, and S.Y. attending as a witness for the Landlord. All in attendance provided a solemn affirmation.

B.L. advised that the Tenants served the Landlord with the Notice of Hearing and evidence package by registered mail on December 23, 2019 and N.S. acknowledged that this package was received. Based on this undisputed evidence, and in accordance with Sections 82 and 83 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

B.L. advised that the Tenants served the Landlord with their Amendments on December 30, 2019 and January 3, 2020 by registered mail and N.S. acknowledged that these were received. Based on this undisputed evidence, I am satisfied that the Landlord was served the Tenants’ Amendments.

N.S. advised that he served the Landlord’s physical and digital evidence to the Tenants by registered mail on January 9, 2020. B.L. confirmed that the Tenants received this evidence, that they had reviewed it, and that they were prepared to respond to it. As the Tenants were prepared to respond to the Landlord’s evidence despite it not being

served in compliance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Tenants' Application with respect to the Notice, and the other claims were dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2000 and rent is currently established at \$488.01 per month, due on the first day of each month.

N.S. advised that the Notice was served to the Tenants by registered mail on December 13, 2019 and the Tenants confirmed that they received this Notice. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord" and because the "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 or jeopardize a lawful right or interest of another occupant or the landlord." The Notice indicated that the effective end date of the tenancy was January 20, 2019.

He advised that on December 11, 2019, the Landlord was working in the pump house on the property, attempting to fix a water issue in the park. He stated that Tenant D.S. banged on the door, yelled, screamed profanities, and uttered threats, and this prevented the Landlord from fixing the water issue. Due to this altercation, he stated that the Landlord called the police. He referenced the video evidence submitted, which supports his position that D.S. yelled at the Landlord and threatened to beat him up. He advised that a sign was left on the door requesting that tenants of the park call the Landlord if there were any concerns with the park. He stated that D.S. committed an act of vandalism when he tore off this sign. He advised that the police spoke to all parties involved, determined that there was no physical assault, and no charges were laid. He stated that the Landlord does not feel safe, that he feels threatened, and that volunteers do not want to go to the park to work there. It is his position that the illegal acts that warranted service of the Notice were the vandalism of tearing off of the sign and the uttering of threats.

The Landlord advised that he was working in the pump house with the door closed when he heard pounding on the door and a voice asking, "Who is in there?" He replied that he was working, and he submitted that D.S. then began shouting and making comments like, "You fucking guy, I want to beat you up" and that he would lock the Landlord in the pump house where he will die. He stated that he went outside to talk with D.S. but returned into the pump house to continue working. He called the police due to this disturbance. He refuted using any profanity in conversation with D.S. He advised that it was evident that D.S. had been intoxicated and that it is "well known" in the park that D.S. consumes a considerable amount of alcohol.

N.S. reiterated that the video depicts D.S. screaming and contradicts D.S.' allegations that the Landlord had come out of the pump house aggressively. As well, he pointed out that the Tenants' written submissions contain many contradictions that call into question the credibility of their portrayals of the interaction.

B.L. advised that D.S. was frustrated with the water issue and that he knew the Landlord was in the pump house. D.S. stated that he was waiting patiently in front of the pump house door but was increasingly frustrated because the Landlord was ignoring him. He stated that he may have talked loudly to the Landlord through the door, but he reiterated that he does not appear to be aggressive in the video evidence. He did acknowledge that he tore the sign off the door out of frustration. He stated that the Landlord threatened him stating, "How would it be if I came to your house?" He advised that he has not had a drink for 35 years, that he is 77 years old, that he has suffered from two heart attacks, that he has a crippled back, and he questioned why he would even suggest engaging in a fight. He stated that he never said he would punch the Landlord and as the police did not do anything after talking to all the parties, this supports his position that he was not aggressive.

Witness A.V. advised that he made the comment to lock the Landlord in the pump house, but this was simply a joke. He confirmed that the Landlord ignored D.S. for 15 minutes but then the Landlord came out of the pump house and became aggressive, standing within an inch of D.S. He stated that the Landlord yelled, "I come to your home and kick you out!"

Witness S.Y. advised that he was working in the pump house with the Landlord when he heard screaming and banging on the door. He stated that D.S. could be heard screaming inappropriately saying, "I'll kick your ass" and other racially charged comments. He stated that the Landlord ignored the Tenant so as not to aggravate his ongoing health issues. He submitted that he heard the comment about being locked in the pump house and he felt threatened. He advised that the Landlord opened the door a crack and this is when D.S. threatened him, and he stated that the Landlord never exited the pump house until the police arrived. After this submission, S.Y. was heard conversing with N.S., and S.Y. then provided contradictory testimony by stating that the Landlord exited the pump house to interact with D.S. He was cautioned that this was his solemnly affirmed testimony and that seeking input from someone else and then changing his story would detract from the credibility of his testimony. He advised that he was simply checking his notes; however, he continued to provide contradictory testimony and it was clearly heard that he continued to confer with N.S. and was being

prompted by him. He stated that D.S. had been aggressive a few days ago regarding a different issue.

While S.Y. was providing his testimony regarding D.S.'s alleged threats to "kick [the Landlord's] ass", D.S. interjected and stated that he did not say this to the Landlord. However, he then said "I will kick your ass" to S.Y. I immediately paused the hearing to confirm that D.S. had made this comment, and he confirmed that he did. I warned him that I had noted this threat and I cautioned him about any further inappropriate outbursts during the hearing.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 45 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 45 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 40 of the *Act* if any of the reasons cited in the Notice are valid. Section 40 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

Regarding the validity of the reasons indicated on the Notice, the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. With respect to the reasons on the Notice, both parties contend that there was a verbal altercation between the Landlord and D.S., which I find to be consistent. However, the details of this interaction are not consistent. As the onus is on the Landlord to prove that the Tenants acted in a manner to warrant service of the Notice, I find it important to note that the Landlord's testimony was mostly just an opposing account of D.S.'s testimony with respect to the interaction. While the Landlord had S.Y. provide his testimony about the details of this exchange, I place little weight on this evidence as it was clear that he would provide one version, then he could be heard being prompted by N.S., and then he would provide a different series of events. As such, I place no weight on S.Y.'s submissions and I find that this detracts from the reliability and the credibility of the Landlord's submissions, and those of N.S., on the whole.

When considering the Landlord's claims, as both parties' evidence depicts vastly differing accounts, I find the evidence that carries the most weight would be the videos that the Landlord submitted for consideration. This security camera video footage starts at approximately 3:54 PM on December 11, 2019. A person, who I assume to be D.S. approaches what appears to be the pump house door and knocks on it or tries to open the door. He stands facing the door, maybe reading the sign on the door, and he could possibly be speaking to whoever is behind the door. D.S. does not appear to be displaying any signs of aggressive behaviour or actions. At approximately 3:57 PM, he removes the paper sign from the door. A second male approaches, who I assume to be A.V., at approximately 4:00 PM and they appear to engage in a discussion for about a minute. Neither male displays any signs that could be interpreted as aggressive.

At approximately, 4:01 PM, a male, who I assume is the Landlord, exits the pump house and engages in a conversation that lasts about 10 seconds with the two males. I do not interpret any of the parties' body language to be aggressive. He returns into the pump house and closes the door. The Landlord comes out about seven seconds later, has a discussion with the two males, returns to the pump house about 20 seconds later, and

closes the door. Again, there are no signs of any body language that I would interpret as being aggressive in nature. Approximately 10 seconds after this, the door opens and the parties appear to have a five second interaction before the door closes again. Approximately 30 seconds after that, the door opens again, a short discussion takes place, and then the door closes. The two males stand in front of the door until A.V. walks off. D.S. continues to stand in front of the door until approximately 4:09 PM and then walks off. Nothing noteworthy happened since the last time the door to the pump house was opened, approximately three minutes prior to D.S. departing.

When reviewing this video evidence and weighing it against the testimony of the parties, while there is no audio, I find there is little evidence before me that D.S. was aggressive or engaged in any behaviours as described by the Landlord. Though D.S. did remove the sign, it does not appear to me as if D.S. acted in any manner that appeared to be aggressive or hostile, nor does it appear as if D.S. banged on the door in the manner or forcefulness as the Landlord suggested. Again, there is no audio, but it does not appear as if D.S. had engaged in a manner where threats were exchanged. I find that the fact that the police determined that they would not take any action supports this finding.

As well, contrary to the Landlord's inconsistent submissions, the Landlord was seen leaving the pump house and engaging with D.S. many times. While D.S. made claims that the Landlord was aggressive, I do not agree with this based on the video evidence. I find that the fact that the police determined that they would not take any action supports this finding as well.

I find it important to note that the crux of this matter is whether the Landlord justified his reasons for service of the Notice. When weighing the totality of the evidence before me, it is clear that both parties are dissatisfied with each other and it is not beyond the realm of possibilities that they engaged in a heated discussion on December 11, 2019 where inappropriate comments were made, by each party, to each other. However, regarding the reasons on the Notice of significant interference, unreasonable disturbance, or serious jeopardization, I find that the Landlord has provided little persuasive evidence that D.S. was the instigator or aggressor in the interaction on this day. I find that while some comments may have been said, I do not find the demeanour or the body language of the parties to be consistent with the serious nature of the comments that the Landlord alleges were exchanged. If D.S. threatened to assault the Landlord, I do not find it likely that the Landlord would exit the pump house or open the door multiple times to converse with D.S. As stated before, I find it more likely than not that both parties engaged with each other and exchanged statements that were inappropriate and

antagonistic. I find that the Landlord must demonstrate that the significance of the altercation justifies that the tenancy should end. While I am satisfied that D.S. and the Landlord engaged in an argument, I do not find that there is compelling evidence to establish that this interaction, or D.S.'s behaviours, constituted a significant interference or an unreasonable disturbance or that there was a serious jeopardization of anyone's health or safety that would have substantiated service of the Notice.

Regarding the reason on the Notice of illegal activity, I find it important to note that the police did not choose to act on any statements provided by either party. As I find the Landlord's submissions to be somewhat dubious in their reliability, I am not satisfied that D.S. uttered threats to the Landlord. Furthermore, while N.S. claims that removing the sign is vandalism, I find that the act of taking down a paper sign, while maybe inappropriate, would not constitute vandalism. Given that N.S. has not taken any action in pursuing a vandalism charge yet, even though he was adamant that this was an act of vandalism, I suspect that N.S. is likely overstating the significance of this act. Consequently, I do not find that there is compelling evidence to establish that D.S. engaged in behaviours that constituted an illegal activity that would substantiate service of the Notice.

Ultimately, I am not satisfied that the Landlord has sufficiently substantiated the grounds for ending the tenancy under the reasons that the "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord" and/or because the "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 or jeopardize a lawful right or interest of another occupant or the landlord." As such, I am not satisfied of the validity of the Notice and I find that the Notice is cancelled and of no force and effect.

However, I am satisfied that D.S. did engage in an altercation with the Landlord that was more likely than not heated and inappropriate. Furthermore, D.S. made a statement in the hearing threatening to assault S.Y. While I warned D.S. that such conduct is unacceptable and that making such a comment is inappropriate, I find that this was likely made in the heat of the moment. Regardless, the consistent evidence is that D.S. was frustrated, that he already engaged in one interaction with the Landlord that was escalated, and then he made this comment. As a result, I strongly caution the Tenants that they are on formal notice that any continued, escalated behaviours or actions that are unacceptable or inappropriate may jeopardize their tenancy.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 65 of the *Act*, I allow the Tenants to deduct this amount from the next month's rent.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of December 13, 2019 to be cancelled and of no force or effect.

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 22, 2020

Residential Tenancy Branch