



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 06, 2019 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated October 31, 2019 (the “Notice”). The Tenant sought reimbursement for the filing fee.

The Tenant appeared at the hearing with the Support Person and Legal Advocate. The Landlord appeared at the hearing with the Co-owner of the manufactured home park.

The Application had been made under the *Residential Tenancy Act*; however, the Tenant confirmed it should have been made under the *Manufactured Home Park Tenancy Act* (the “Act”) and I have considered it under this *Act*.

I explained the hearing process to the parties who did not have questions when asked. The Tenant and Landlord provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties and all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. There is a written tenancy agreement between the Landlord and Tenant in relation to the site. The tenancy started November 02, 2007 but a new agreement was signed in 2015. The tenancy is a month-to-month tenancy. Rent is \$305.00 per month due on the last day of each month.

The Notice was submitted as evidence. The grounds for the Notice are:

1. The Tenant, or a person permitted on the property by the Tenant, has significantly interfered with or unreasonably disturbed another occupant or the Landlord.
2. The 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 and jeopardize a lawful right or interest of another occupant or the Landlord.

The Details of Cause state:

The Act 40(1)(c)(i) The tenant engaged in criminal harassment of the landlord and the landlords contractor from the dates of July 10 2019 to September 30.
40(1)(d)(ii) The tenant affected the quiet enjoyment of the tenants D.N., G.B., P.E. by harassing them for being listed as witnesses in the hearing on October 21, 2019. 40(1)(d)(iii) Taking pictures of the landlord at work and interfering with the landlords ability to work and speaking negatively about the landlord and the park in general to others.

There was no issue that the Notice was served on the Tenant October 31, 2019 in person.

The Landlord testified as follows in relation to the grounds for the Notice. The Tenant writes down everything the Landlord does. In July, the Tenant wrote the Landlord a letter saying the Landlord cannot drive by her house. The Landlord has to work around the Tenant's site. The Tenant has it in her mind that the Landlord is harassing her which is not true.

The Landlord further testified as follows. The Tenant phoned the Landlord's witnesses for a prior hearing and upset them. The Tenant is talking to others saying the Landlord is harassing her. The Tenant submitted letters from her doctor at the prior hearing stating the Landlord is harassing her. The Tenant is ruining the Landlord's reputation.

The Landlord acknowledged that the notes of what the Landlord was doing, and doctor's letters, were submitted at a prior hearing. The Landlord could not point to evidence that the Tenant wrote down what the Landlord did outside of the context of the prior hearing. The Landlord did not know if the Tenant continued to write down what the Landlord does after the prior hearing. The Landlord could not point to evidence that the Tenant told others that the Landlord is harassing her outside of the documentation submitted for the prior hearing.

The Landlord confirmed the Tenant wrote down things the Landlord was doing on common property in the park. The Landlord testified that the Tenant accused the Landlord's contractor of targeting her and peering in her windows.

The Landlord testified that the Tenant has a security camera on her home. The Landlord takes issue with this. The Landlord complained that the camera records the Landlord when she drives by the home on a common road. The Landlord submitted that it is an invasion of privacy to have her photo taken when she drives by the Tenant's home. The Landlord complained that the camera points at the window of the home next to the Tenant's home. The Landlord could not point to evidence from the Tenant's neighbour indicating this is an issue. The Landlord testified that it is upsetting to know the "whole place" is under surveillance by camera.

In relation to interfering with the Landlord's work, the Landlord again referred to the Tenant writing down what she does. The Landlord testified that it bothers her to have someone write down what she is doing. The Landlord also testified that the Tenant put

up a “no trespassing” sign somewhere other than on her site and thus interfered with work being done. When questioned why this interfered with work, the Landlord said, “well if I paid attention to it, it would”.

The Landlord submitted a letter from D.H. about the Tenant calling her.

The Legal Advocate confirmed the Tenant denies all the Landlord’s claims.

The Tenant testified that she wrote things the Landlord was doing down for a previous hearing. The Tenant confirmed she was in her home when she observed the Landlord. The Tenant testified that the photos taken in evidence were taken from her home or on common property.

The Legal Advocate pointed out the lack of evidence from other tenants stating they have been harassed. The Legal Advocate pointed out that the one letter submitted from D.H. states that the Tenant called her once and never again. The Tenant testified that she only spoke to D.H. once. The Tenant testified that G.B. and P.E. did not tell her not to contact them and that she never contacted them again.

The Legal Advocate pointed out that the Landlord sent the Tenant a letter October 02, 2019 stating that if the Tenant continued to disturb others she will be issued a notice ending the tenancy. The Tenant testified that she never contacted the other tenants after the October 02, 2019 letter was issued. This letter was submitted in evidence.

The Tenant testified that she changed the angle of her camera once it was brought to her attention that the angle was an issue in relation to the neighbour’s home. The Tenant testified that the camera is aimed at her car and front entrance.

In reply, the Landlord disputed that the Tenant changed the angle of the camera and referred to a photo submitted in the Tenant’s evidence.

The Tenant submitted evidence from the prior hearing including notes and submissions about the Landlord and her partner, doctor’s letters and witness letters.

The Tenant submitted photos, three of which include a person. In two of the photos, the person is knocking on the Tenant’s door.

Analysis

There is no issue the Tenant received the Notice October 31, 2019. The Tenant filed the Application November 06, 2019, within the 10-day time limit to dispute the Notice set out in section 40(4) of the *Act*.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules of Procedure. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I have only considered the issues listed in the Details of Cause section of the Notice as I am not satisfied the Tenant was aware of further issues not listed on the Notice.

I am not satisfied based on the evidence that the Tenant has criminally harassed the Landlord or Landlord's contractor. I am satisfied based on the testimony of the Tenant, and the notes themselves, that the notes the Tenant took about what the Landlord and her partner were doing was in the context of a prior hearing where the Tenant was claiming a breach of quiet enjoyment. Based on the testimony of the parties, and the notes themselves, I accept that the notes were taken about what was observed from the Tenant's home and what was observed on common property. I note that most of the notes relate to the Landlord and her partner driving in the area of the Tenant's home. In the circumstances, I do not accept that the Tenant taking the notes amounts to criminal harassment in the absence of further evidence and testimony to support this. I am not satisfied any of the other allegations amount to criminal harassment or illegal activity. The Landlord has failed to prove the second ground for the Notice.

I am not satisfied the Tenant taking notes for a prior hearing, submitting doctor's letters for a prior hearing or submitting witness letters for a prior hearing amounts to a significant interference or unreasonable disturbance. Parties should be free to collect and document evidence that they wish to rely on at an RTB hearing. The documents would only have been read by the parties involved in the hearing and the Arbitrator. There is insufficient evidence before me showing these documents, or the comments in them, were obtained or used other than in the context of the prior hearing.

The Landlord did not submit a letter from the Tenant stating the Landlord cannot drive by her house. I am not satisfied this allegation is a basis for the Notice.

I am not satisfied the Tenant significantly interfered with or disturbed the Landlord's witnesses from the prior hearing. The Landlord did not submit documentary evidence from G.B. or P.E. or call these individuals as witnesses. I do not accept that G.B. or P.E. were harassed or disturbed in the absence of some evidence from them.

In relation to the letter from D.N., it shows the Tenant called D.N. once. I am not satisfied that anything the Tenant said to D.N. amounted to harassment, a significant interference or an unreasonable disturbance as D.N. has not noted anything in the letter that was said which would amount to these. It may be that D.N. did not like receiving the one call from the Tenant. However, this is not enough to justify ending the tenancy.

In relation to the security camera, I am satisfied based on the photos submitted, which I understand to be from the camera, that the camera is on the home pointed at the entrance to the home. I do not accept that the Tenant having a security camera on her home amounts to a significant interference or unreasonable disturbance. It is not uncommon or unusual for someone to have a security camera on their home aimed at the entrance to their home. Given the angle, the camera would only capture the Landlord if the Landlord drove by the Tenant's home on a common road. I do not accept that being captured driving on a common road in the park is an invasion of privacy, a significant interference or an unreasonable disturbance.

In relation to the camera capturing the neighbour's window, I am not satisfied this affects the Landlord in any way. The Landlord did not submit evidence from the neighbour or call the neighbour as a witness. I am not satisfied there has been a significant interference or unreasonable disturbance of the neighbour in the absence of evidence from the neighbour. Having said this, the Tenant should ensure that the camera does not point at the neighbour's window.

In relation to the "no trespassing" sign, I do not accept that this amounts to a significant interference or unreasonable disturbance. The Landlord testified that the Tenant put it on property outside of the site. The Tenant cannot control access to areas other than the site. If the Tenant purports to do so, the Landlord can simply disregard the sign. This occurrence does not justify ending the tenancy.

I have considered whether all the allegations together amount to a significant interference or unreasonable disturbance. I am not satisfied they do given the lack of evidence submitted supporting the allegations or that they amount to a significant interference or unreasonable disturbance.

In the circumstances, the Landlord has failed to prove either ground in the Notice. The Landlord has failed to provide sufficient or compelling evidence to support the Notice.

The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 65 of the *Act*. Pursuant to section 65(2) of the *Act*, the Tenant can deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 08, 2020

Residential Tenancy Branch