Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, FFT

Introduction

On December 23, 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*.

Tenant A.V. attended the hearing with B.L. attending as an advocate for the Tenants. N.S. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

B.L. advised that the Tenants served the Landlord with the Notice of Hearing 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 package.

B.L. advised that the Tenants served the Landlord with their evidence by registered mail on February 7, 2020 and N.S. confirmed that the Landlord received this evidence. As the Tenants' evidence was served in compliance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

N.S. advised that he served the Landlord's evidence to the Tenants by registered mail on February 14, 2020 and B.L. confirmed that the Tenants received this evidence. As the Landlord's evidence was 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 2, 2008 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 Tenant 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." The Notice indicated that the effective end date of the tenancy was January 20, 2019.

N.S. simply referenced the evidence provided and stated that the Tenant has been causing issues for a significant amount of time. More recently, he stated that the Landlord and an employee were working in the pump house on the property on December 11, 2019 and another tenant of the park came up to the door of the pump house and started yelling and screaming at the Landlord because he would not come out. He stated that the Tenant supported this other tenant and suggested that they should "lock" the Landlord inside the pump house. As a result, the Landlord was concerned for his safety and called the police. He referenced a signed letter from the Tenant where he acknowledged having made this comment, albeit being a joke. He stated that the Landlord cannot do work or maintenance on the property due to threats like this and that he was unable to attend the hearing due to anxiety related health concerns as a result of these interactions.

He stated that the Tenant made a comment that they should lock the lock the Landlord in the pump house so he "could rot in there" and he recalls the Landlord specifically saying this. However, he could not point to where the Landlord indicated this in his letter that was submitted as documentary evidence. He advised that when the police attended, they spoke to all parties involved and determined that because there was no physical assault, they could no do anything. He stated that he was unable to obtain a copy of the police report as the process for doing so is lengthy, despite this incident happening over two months ago. While he made references to video surveillance evidence in his written submissions, he did not submit this evidence for consideration as he did not believe it would be helpful. He also made reference to an incident where the Tenant allegedly hit the Landlord's car with a cane.

B.L. referenced the previous hearing and stated that the Tenant was simply a bystander to an incident that involved another tenant of the park. She stated that during this exchange, the Tenant admitted to joking about locking the Landlord in the pump house. She stated that the Landlord exited the pump house four or five times to converse with the other tenant. She advised that the Landlord had been previously unsuccessful in attempting to evict the Tenant and that this current Notice demonstrates the Landlord's continual abuse of the *Act*.

The Tenant advised that a few days before the pump house incident, he was helping the Landlord's employee with some work on the property and the Landlord offered to

pay him for this work. He reiterated that the Landlord did not even bother to submit the video evidence that the Landlord refers to in his written submissions.

B.L. advised that the Tenant is not violent and that he attempts to help others and the Landlord, around the park. She stated that he did not hit the Landlord's car with his cane and in fact, he was physically threatened by the Landlord years ago, with a shovel. She referenced two previous Dispute Resolution Decisions which support her position that the Landlord is issuing Notices that are not justified.

In response to the alleged cane incident, N.S. advised that he "could not remember" if he reported this incident to the police, and that it occurred "maybe 7 months ago" but he "can't recall" when exactly this incident happened. Regarding the pump house incident, he stated that the Landlord only came out of the pump house once to talk to the other tenant, not multiple times. He also noted that the Tenant's written submissions with respect to the interaction with the Landlord outside of the pump house is contradictory to his testimony. Finally, he stated that it was not necessary to submit his video surveillance evidence, that it only demonstrates that the Tenant was in front of the pump house, and that the Tenant already admitted that he was there and that he made the joke.

B.L. advised that the video demonstrates that the Landlord would not exit the pump house, prompting the Tenant's joke, and then he exited the pump house multiple times afterwards. This demonstrated that the Landlord was not scared during this interaction and that he in fact worked in the pump house for an additional three hours.

The Tenant stated that the Landlord did come out of the pump house multiple times and that he was simply a bystander to this incident. He confirmed that when the police attended the scene, they questioned all parties involved and determined that there were no concerns going forward, or that any charges would be laid.

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,*

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, it is N.S.'s position that the Tenant's comment to lock the Landlord in the pump house was not a joke, but a serious threat that justifies service of the Notice alone. In addition, his previous actions demonstrate that this last incident is not an isolated incident and that the Tenant has exhibited a pattern of ongoing behaviours that warrant service of the Notice.

While the consistent and undisputed evidence is that the Tenant did suggest that the Landlord should be locked in the pump house, I have difficulty agreeing with N.S.'s position that this was a legitimate and serious threat. During the hearing, N.S. testified that the Tenant specifically stated during the incident of December 11, 2019 that they should lock the Landlord in the pump house so he "could rot in there." However, he could not point to the evidence submitted confirming that this specific comment was uttered by the Tenant, and then he unconvincingly stated that he simply "recalls" that the Landlord told him this. As the Landlord was present during this incident, I would expect the Landlord's written statement to be more of an accurate reflection of what transpired during the incident. As this comment could not be found in the Landlord's written statement, I find N.S.'s comment to hold little weight as it appears to be unsupported hearsay. As well, it causes me to question the reliability of his statements

on the whole as it appears to be consistent with his overall manner of portraying the incident in an exaggerated fashion that verges on hyperbole, rather than fact.

I find this is supported by the consistent evidence that the police, after interviewing all parties involved, determined that nothing further would result from their investigation. I do not find it reasonable that if there were legitimate verbal threats made by the Tenant, that the police would elect not to act. I question N.S.'s claim that the police advised him that they would only intervene if there were physical acts of violence committed. Furthermore, while I accept that obtaining a copy of a police report may be a lengthy process, I do not find it reasonable that if the Tenant's comment was deemed to be such a significant threat, that a police report could not be generated and obtained for over two months since the incident occurred. I find it more likely than not that no such report exists, or if it does, that it does not support a serious threat as purported.

Moreover, I am doubtful of N.S.'s submissions that his evidence submitted demonstrates an unacceptable pattern of ongoing behaviours that warrant an end to the tenancy. In fact, it was determined in the previous decision involving the Tenant, dated September 25, 2018, (the relevant decision is noted on the first page of this decision) that the Landlord provided insufficient evidence to support the reason for ending the tenancy. I find that this indicates that the Landlord did not sufficiently establish that the allegations against the Tenant were legitimate.

In addition, while he claims that the Tenant hit the Landlord's car with his cane, N.S. has only provided vague details about when this incident occurred. As well, N.S. submitted insufficient evidence that demonstrates that if it was his belief that this was such a serious incident, that he did anything in response to it, such as notify the police or serve a notice to end the tenancy.

In reviewing the totality of the evidence before me, while it is acknowledged that the Tenant suggested that the Landlord should be locked in the pump house, it should be noted that this is not an acceptable comment to make or even joke about. However, I am not satisfied that this comment was a credible threat as suggested by N.S. and I find his testimony to be based on overstatement or embellishment rather that credible facts. Furthermore, while he attempted to portray an escalating pattern of behaviours demonstrated over the years that, in aggregate, justifies service of the Notice, I do not find that N.S. has submitted sufficient evidence to realistically justify this either.

Ultimately, I do not find that there is compelling evidence to establish 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.” 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.

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 58 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 14, 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: March 2, 2020

Residential Tenancy Branch