



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Woodland Mobile Home Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

I was designated to hear this matter pursuant to section 51 of the *Manufactured Home Park Tenancy Act* (the “Act”). The landlord applied for:

- an order for early termination of a tenancy, pursuant to section 49; and
- authorization to recover the filing fee for this application pursuant to section 65.

Tenant JF (the tenant) and the landlord attended the hearing. The landlord was represented by park manager LD (the landlord) and park owner HA. Witness BC for the landlord also attended. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the other’s evidence and notice of hearing (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 82(2)(a) of the Act.

Issues to be Decided

Is the landlord entitled to terminate the tenancy early and receive an order of possession?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the parties’ claims and my findings are set out below.

The parties agreed the manufactured home park tenancy started in August 2015. Monthly rent is \$524.00, due on the fifteenth day of the month. A tenancy agreement was submitted into evidence.

The landlord affirmed on March 15, 2020 she was walking by the tenant's lot and the tenant confronted her belligerently regarding the clearance of trees in the mobile home park. The tenant threatened to physically assault her with a rake. The landlord returned to the office and called the police. The police file number regarding this incident is on the cover page of this decision. The landlord applied to receive a copy of the police report but did not receive it yet. The tenant affirmed she called the landlord a liar, but she did not have a rake and was several feet away from her. The tenant denied she tried to assault the landlord.

The landlord affirmed on March 17 the tenant accelerated her car towards the landlord at a speed in excess of 60 km/h, stopping her car very close to the landlord. The tenant left her car and physically assaulted the landlord by punching her in the head. The landlord affirmed she went to the police and provided a statement about this incident. The police report number is on the cover page of this decision. The tenant denied the landlord's affirmation.

The landlord submitted into evidence a written statement signed by witness BC who was also present during the hearing. It states:

On March 17, 2020 I was in my residence at [anonymized] at approximately 2:30pm. I was sitting on my couch in the front living room which overlooks [anonymized] street and I heard a car accelerating down the road in the direction of my home and heard it screech to a halt in front of my windows. I was concerned and ran to the window to see what was going on, I witnessed the cream colored car that is regularly seen on our street stopped in front of our window with the drivers door open and the female driver screaming at the Park Manager and the car was about a inch from the Park Manager. It seemed like the driver was trying to hit the Park Manager with the car. I also heard voices raised in anger and I heard the Park Manager say she was going to call the police right now and the driver of the car laughed and said go ahead.

Witness BC affirmed he does not know who was inside the car on the March 17, 2020 incident and that he never saw this person before. BC also affirmed that on April 04, 2020 the tenant tried to contact him but he did not communicate with her.

The tenant affirmed she has 21 police complaints against the landlord for harassment, failure to perform maintenance tasks, entering the property without notice, physical and verbal abuse and filing false charges against the tenant. The tenant affirmed she is suffering discrimination from the landlord because of her disability and her gender.

The landlord affirmed the tenant filed a previous application for dispute resolution for an order for the landlord to comply and a monetary order for compensation. The tenant was not successful. The file number is on the cover page of this decision.

Towards the end of the hearing, when the landlord was making her closing arguments, the tenant interrupted her twice. Because of this the tenant was muted. When the landlord finished her closing arguments the tenant was unmuted and was able to make her closing arguments.

Analysis

Section 49 of the Act states:

- (1)A landlord may make an application for dispute resolution to request an order
 - (a)ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 40 [landlord's notice: cause], and
 - (b)granting the landlord an order of possession in respect of the manufactured home site.
- (2)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.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and 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.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In the case before me, both parties have provided conflicting testimony regarding incidents on March 15 and March 17, 2020 between the tenant and the landlord. Every affirmation of the landlord was denied by the tenant. The landlord's witness did not affirm the person he observed on the March 17, 2020 incident is the tenant and he affirmed he had never seen the person driving the car before. The two police reports mentioned by the landlord were not submitted into evidence, nor was any proof the landlord applied to obtain a copy of them.

There was no evidence of the tenant, or someone the tenant had permitted on the property, has engaged in any of the actions of section 49(2) of the Act.

I find the landlord has failed to prove, on a balance of probabilities, the grounds to end the tenancy in accordance with section 49(2) of the Act.

Accordingly, the application for an order for early termination of a tenancy, pursuant to section 49 of the Act, is dismissed without leave to reapply. The tenancy will continue in accordance with the Act.

As the landlord was not successful in her application she is not authorized to recover the filing fee.

Conclusion

The landlord's application for an order for early termination of a tenancy is dismissed without leave to reapply.

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: April 14, 2020

Residential Tenancy Branch