



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The Landlord applied for an early end to the tenancy, pursuant to section 49 of the *Manufactured Home Park Tenancy Act* (the "Act").

The Landlord attended the hearing and provided testimony (along with several witnesses). However, the Tenant did not appear. The Landlord stated that he posted the Notice of Hearing and evidence to the Tenant's front door on May 21, 2020. The Landlord had a witness present at the hearing to corroborate that this occurred. Pursuant to section 83 of the Act, I find the Tenant is deemed served with this package on May 24, 2020, the 3rd day after it was posted.

The Tenant uploaded a document to the dispute access site stating he cannot participate in the hearing because he had a heart attack on May 20, 2020, and he has not found legal counsel. The Tenant indicated he returned from the hospital on June 2, 2020. The Tenant did not elaborate any further.

The Landlord stated he was approached by the Tenant in the last couple of days, within the home park, and he said he would not be attending the hearing because of his health issues. The Landlord stated he has seen the Tenant biking around town, and around the home park over the past weeks, so his health can't be that bad, or such that he would be unable to call into the hearing or have an agent do so on his behalf.

I have considered what the Tenant wrote in. However, if the Tenant was unable to attend the hearing today, he was free to appoint an agent to attend the hearing on his behalf. It appears the Tenant was aware of this hearing, including how to upload and provide evidence. However, he did not attend, nor did he have an agent attend on his

behalf. I find the Tenant has been sufficiently served with the dispute resolution proceedings and it is not sufficiently clear why he would be unable to either call into the hearing, or have someone else do so on his behalf. I further note the Landlord stated he has seen the Tenant biking around over the past week. I find there is insufficient evidence to demonstrate that this proceeding should be adjourned or delayed due to the alleged health issues presented by the Tenant. I find an adjournment would unfairly prejudice the park residents, as there are concerns over their safety, and security due to the Tenant and his guests.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to 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.

Issue(s) to be Decided

- Is the Landlord entitled to end the tenancy early and obtain an Order of Possession?

Background and Evidence

The Landlord stated that the Tenant has engaged in threatening behaviour on several occasions. The Landlord stated that the issues with this Tenant have been ongoing for over a year, but things have escalated recently. The Landlord explained that last August 2019, he gave a written warning letter to the Tenant for his loud, disruptive and disorderly conduct. The Landlord stated that the Tenant also frequently has guests over, who climb over the locked gates (this is a gated mobile home park). The Landlord indicated that some items have been stolen by guests of the Tenant.

The Landlord also explained that more recently (mid April 2020), the Tenant started a large bonfire in his backyard, nearby his mobile home. The Landlord stated that he saw a huge amount of smoke and flame coming from the Tenants area, and when he attended the site, the Tenant had a large fire (over 8 feet tall) burning. The Landlord explained that the Tenant had the fire so hot, and large, that it was starting to melt and burn the fence which surrounds the entire park. The Landlord stated that there are no fires allowed, as per park rules.

A witness for the Landlord also stated that she saw the fire, and could not believe the size and the amount of smoke when she went over to see what was going on. She reiterated that the fire was at least 8 feet high and was dangerously close to the fence and park structures.

The Landlord stated that there was also another incident on May 15, 2020, where the Tenant was being loud, highly aggressive, and disruptive. The Landlord explained that on May 15, 2020, he heard loud yelling at the Tenant's rental unit, and he went down to see what was going on. The Landlord stated that the Tenant was intoxicated, and one of his guests was passed out on the lawn at around 3pm. The Landlord stated that while one of his guests was passed out on the front lawn, the Tenant was in the back yard arguing with himself. The Landlord stated that he went to speak with the Tenant about what was going on, and the Tenant stood up and "charged at him" while screaming. The Landlord stated that the Tenant completely lost it, and physically "came at him" such that if he did not flee and run away, he would have been hurt. The Landlord stated he left immediately and called the police. A police file # was provided into evidence.

Several witnesses, who were at the hearing, attested to seeing the Tenant charge at the Landlord when he attended the Tenants area on May 15, 2020. The witnesses stated that the Landlord would have been physically hurt if he had not fled and called the police, given how angry and hostile the Tenant was.

Analysis

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to the landlord when the circumstances of a tenancy are such that it is unreasonable or unfair to a landlord or other residents to wait for a notice to end tenancy to take effect, such as a notice given under Section 40 of the Act for cause. Therefore, in this case the Landlord bears a strict burden to prove with sufficient evidence that the tenancy should end early Section 49 of the Act.

An application for an early end of tenancy under section 49 of the Act is reserved for situations where a Tenant poses an immediate and severe risk to the rental property and home site, 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.

Under section 49 of the Act, the director may end a tenancy and issue an order of possession only if satisfied, there is sufficient cause; and, it would be unreasonable, or unfair to the Landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 40 to take effect.

I note the following portion of the Act:

Application for order ending tenancy early

49 (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.

I have carefully considered the undisputed evidence before me, including the witness testimony, and I find the Tenant's behaviour is significant and severe enough as to warrant an early end to the tenancy, pursuant to section 49(2)(ii) of the Act. I find the Tenant's large bonfire in close proximity to fences and other structures, was both contrary to park rules, and was excessively risky and dangerous. The Landlord stated it was melting nearby fence panels and I accept this could have easily escalated and endangered others in the park. I find this risk was severe.

Further, the I have considered the Landlords statements, and the witness statements, surrounding the incident on May 15, 2020. I find the Tenant's behaviour was hostile, aggressive, and threatening in nature. I note the Tenant was observed physically coming at the Landlord when he was attending the area to investigate complaints about yelling, and someone passed out on the front lawn. The Landlord had to move out of the way to avoid physical interaction with the Tenant, in his hostile state. The police were called shortly after. I find the Tenant's behaviour, on multiple occasions, has posed an immediate and severe risk to other occupants and the Landlord. As such, I find the Landlord is entitled to an order of possession, effective 2 days after service.

Conclusion

The Landlord has met the burden to prove the tenancy should end early.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: June 08, 2020

Residential Tenancy Branch