



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1519569 Alberta Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI CNC

Introduction

This hearing dealt with an application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 36; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 40.

CB ("landlord") represented the landlord in this hearing. The tenant attended the hearing with his two advocates, DD and KS. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence and that he was ready to proceed. The landlord did not submit any written evidence for the hearing.

The tenant confirmed receipt of that the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on August 14, 2020. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 81 of the *Act*.

Issues

Is the tenant entitled to a determination regarding their dispute of an additional rent increase by the landlord?

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

Both parties agreed that a tenancy exists between both parties. This month-to-month tenancy began on October 1, 2018. The tenant submits that both parties discussed a rent-to-own arrangement where his monthly rent payments would go towards down payment for purchase of part of the landlord's property. The tenant submits that he had informed that landlord that he would require at least 5 years to obtain financing. The tenant testified that he has been paying \$300.00 in monthly rent to the landlord, but as of November 1, 2019 the landlord had demanded that he pay \$500.00 per month, which the tenant has been paying. The tenant testified that he was never given any proper notices of rent increase from the landlord, and he had paid after being threatened by the landlord. The tenant provided in evidence a bank draft dated August 31, 2020 for \$500.00 that was paid for September 2020 rent. The tenant also provided a handwritten statement dated July 16, 2019 from the landlord which reads:

"I, CB, re: property...have received \$300.00 per month since October 1, 2018 from GL for rent at said location."

The landlord testified in the hearing that the monthly rent was always set at \$500.00 since the beginning of the tenancy, but at the tenant's request, receipts were issued to reflect only \$300.00 in monthly rent in order to not affect the tenant's vehicle financing. The tenant disputed this.

The tenant also filed an application to dispute the 1 Month Notice to End Tenancy served to him on August 14, 2020. The landlord provided the following reasons for ending the tenancy:

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 tenants or a person permitted on the property by the tenants have put the landlord's property at significant risk.
3. 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.
4. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The landlord testified that he was tired of pursuing the tenant for rent, and that the tenant was badmouthing him. The landlord testified that he was also seeking the end of the tenancy because the tenant had constructed roads on the property without his permission, cut down and removed several trees on the property without his permission, and has engaged in a marijuana grow operation that exceeded the number allowed by law. The landlord also testified that he tenant had stored multiple vehicles on the property. The landlord stated that he wished to sell the property, and wished to have the property vacated and cleaned up in order to accomplish this.

The tenant disputes that he had cut down any trees or constructed roads without the landlord's permission. The tenant testified that the landlord had granted him permission in the summer of 2019 to level an area to park vehicles and build a shop. The tenant testified that the landlord had granted him permission to make changes to the property with the understanding that the tenant would be purchasing this portion of the land. The tenant admits to constructing a small fire guard in May 2020 at the base of the site, but testified that he had permission to do so.

The tenant does not dispute cutting down some trees, but testified that he also had permission to do this as the trees were dead and used for firewood.

The tenant disputes engaging in any illegal activity on the property, including growing marijuana plants that exceed the limits prescribed by law.

The tenant's witness attended, and confirmed the tenant's testimony.

Analysis

Section 40 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenants may dispute the 1 Month Notice by filing an application for dispute resolution within ten days after the date the tenant receives the notice. As the tenant filed their application is within the time limit under the *Act*, the onus therefore shifts to the landlord to justify the basis of the 1 Month Notice.

The landlord cited that the tenant has engaged in illegal activity as a reason for ending this tenancy. In light of the disputed testimony, I find that the landlord's testimony and evidence for this hearing does not adequately support that the tenant has engaged in any illegal activity. I am not satisfied that this tenancy should end on the grounds of illegal activity.

The tenant did not dispute that he had made changes to the property, including the construction of a fire guard and the cutting of several trees. As stated above, the burden of proof is on the landlord to support that the tenancy should end on the ground provided on the 1 Month Notice. The tenant testified that he had permission from the landlord to perform these actions, which the landlord disputes. In light of the disputed facts surrounding the tenancy and agreements made between the parties, I am not satisfied that the landlord had provided sufficient evidence to support that the tenancy should end on the grounds provided on the 1 Month Notice. I am not satisfied that the tenant has done significant damage to the property, or put the landlord's property at significant risk. Although the landlord may be disturbed by the tenant's actions, or may disapprove of them, I find that the landlord had failed to provide sufficient evidence to support that the actions of the tenant are serious enough to justify the ending of this tenancy.

The landlord also expressed his frustration that the tenant would be repeatedly late in paying his monthly rent, and that he wanted to clean and repair the property for sale. I find that the landlord failed to properly indicate on the 1 Month Notice that he wished to end the tenancy for repeated late rent payments. As required by section 45 of the *Act*, the notice must state the grounds for ending the tenancy. The landlord did not select this reason on the 1 Month Notice. Furthermore, section 40 of the *Act* does not allow a landlord to end a tenancy in order to sell the property or prepare the property for sale. For all these reasons, I allow the tenant's application to cancel the 1 Month Notice dated August 14, 2020. The tenancy is to continue until ended in accordance with the *Act*.

Section 35 of the *Act* stipulates that a notice of rent increase must be provided 3 months in advance of the increase and be in the approved form, available on the RTB website; a verbal or written demand does not comply with this requirement.

In light of the conflicting testimony, and the absence of a written tenancy agreement, I find that the tenant had provided sufficient evidence to support that monthly rent was set at \$300.00 until it was increased to \$500.00 by the landlord effective November 1, 2019. Although the landlord testified that the monthly rent was set at \$500.00 since the beginning of the tenancy, I find that the landlord's testimony to be unsupported by written evidence or witness testimony. Although the landlord testified that there was an arrangement for the tenant to be provided receipts for the lesser amount of \$300.00 instead of the monthly rent of \$500.00, I find this was also unsupported by evidence. I do, however, find that the tenant had provided evidence in support of a signed, written statement by the landlord that the landlord had been receiving \$300.00 in monthly rent since the beginning of the tenancy. I find that the tenant had also provided sufficient

evidence to support that he had complied with the landlord's demands that he start paying the increased rent of \$500.00 under duress.

I find that the landlord have failed to impose rent increases in accordance with the *Act* and legislation. Therefore, I order that monthly rent be set at \$300.00.

I order that the additional \$200.00 in monthly rent paid by the tenant for the period of November 1, 2019 through to October 1, 2020 be returned to the tenant (12 months x \$200.00 = \$2,400.00 less any rent owed to the landlord for this period). I allow the tenant to recover the additional rent paid for this period by reducing future monthly rent payments until the amount owed to the tenant is paid in full. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$2,400.00, and the landlord(s) must be served with this Order as soon as possible. I allow the monetary order to be amended to reflect any monthly rent owed by the tenant for this period.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice dated August 14, 2020. The tenancy is to continue until ended in accordance with the *Act*.

I find that the landlord failed to impose rent increases in accordance with the *Act* and legislation. Therefore, I order that monthly rent be set at \$300.00.

I order that landlord accept the \$300.00 in monthly rent as agreed upon at the beginning of the tenancy, and that any future rent increases be implemented in accordance with the *Act*.

I issue a \$2,400.00 Monetary Order in favour of the tenant in satisfaction of the additional rent paid by the tenant for November 1, 2020 to October 1, 2020, less any rent owed by the tenant for this period (12 months x \$200.00 = \$2,400.00 less any rent owed to the landlord for this period). I allow the tenant the above monetary award by reducing future monthly rent payments until the amount is recovered in full. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$2,400.00, and the landlord must be served with **this Order** as soon as possible. I allow the monetary order to be amended to reflect any monthly rent owed by the tenant for this period.

Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: October 2, 2020

Residential Tenancy Branch