



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession due to a mutual agreement, and to recover the filing fee from the tenant for the cost of the application. The hearing was originally scheduled for November 9, 2020 and was adjourned at the request of the tenant's then Legal Counsel. My Interim Decision was provided to the parties.

The individually named landlord attended the hearing and represented the landlord company. The tenant also attended. The parties each gave affirmed testimony and the landlord called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established that the tenancy should end due to mutual agreement between the parties and the tenant's failure to comply with conditions agreed to in a previous hearing?

Background and Evidence

The landlord testified that this month-to-month tenancy began on or before January 1, 2014, and the parties entered into a signed tenancy agreement for the tenancy commencing on January 1, 2014. Rent in the amount of \$564.14 is currently payable on the 1st day of each month and there are no rental arrears. The tenant still resides in the tenant's manufactured home in the manufactured home park. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that a hearing was convened on August 11, 2020 concerning the landlords' application for an Order of Possession for cause. A copy of the resulting Decision has been provided for this hearing, and it is dated August 11, 2020. It states that the parties had agreed to settle the dispute in the following terms:

- "1. This tenancy will end at 1:00 p.m. on February 28, 2021 by which time the tenant and any other occupant will have vacated the manufactured home site.
2. The tenant agrees to put her manufactured home on the market for sale with a realtor by September 15, 2020.
3. The tenant agrees that her daughter and grandchild will no longer occupy the manufactured home site after August 31, 2020.
4. The tenant and her guests will abide by all the park rules and the tenancy agreement. If the tenant breaches any of the terms of the tenancy agreement, park rules, or this settlement agreement, the landlord is at liberty to file an application to end the tenancy before February 28, 2021.
5. The rights and obligations of the parties under the Act continue until the tenancy ends."

The Arbitrator granted an Order of Possession in favour of the landlords effective at 1:01 PM on February 28, 2021.

The tenant resides in the manufactured home with her mother, who is listed in the tenancy agreement as an occupant, and since the agreement and order was made on August 11, 2020, the tenant has listed the manufactured home for sale.

However, the tenant's daughter, who has caused significant disruption in the manufactured home park still resides with the tenant, and still causes significant disruption. There have been multiple visits at the tenant's manufactured home by police regularly, damage to the site and erratic behaviour. The tenant's daughter and guests sit on the porch and consume alcohol and marihuana to excess and yelling. Some tenants are frightened, and the Ministry apprehended the tenant's grandchild from the home on September 24, 2020.

The landlords seek an Order of Possession effective December 15, 2020 and rely on paragraph 4 of the August 11, 2020 Decision, and the landlord testified that it's unfortunate because if the tenant's daughter wasn't so disruptive there would be no reason to end the tenancy, but the tenant chooses to have her daughter there despite multiple warnings. The situation has been significantly worse over the last 6 months.

The landlords' witness testified that she is a neighbour of the tenant and has resided there for over 8 years.

On 2 occasions since October 1, 2020 the witness has been disturbed by the tenant's daughter. On October 1, 2020 at 8:00 a.m. the tenant's daughter was outside dancing erratically and shouting. The witness went outside to her deck and watched the tenant's daughter, who was saying things like, "I'm crazy," and, "I'm a psycho-path," and, "Stop following me." There was no one else around. The tenant's daughter had a bottle of something and was spraying something in the driveway and in a neighbour's yard. She continued to go inside and back out 3 or 4 times. The witness called police, who attended and spoke with someone, but left after about 3 minutes.

On the second occasion, October 12, 2020, the witness' husband and son were outside when the tenant's daughter approached the witness' son, who is in the military, and made accusations and threats that since he had gang associations, she would have him removed from his job in the military.

Since October 1, 2020 the witness has been tracking the number of times that police show up, which is all times of the night or day. Since October 1, 2020 they've attended 5 times; sometimes they take her away and sometimes not, but she always returns the next day.

The witness further testified that her husband has medical issues, and given the previous behaviour of the tenant's daughter, the witness and family don't know what her behaviour will be, causing concern of their property and safety. The witness has installed security cameras as a result.

The tenant testified that she has COPD and her mother is 87 years old. The tenant can only do so much and then must rest for awhile. Her daughter has not resided in the manufactured home for 18 months. She moved into an RV over a year ago.

During COVID-19 lockdown she was visiting the tenant, however the RV had been damaged and the tenant had to take her in and her child. Also, the tenant's doctor provided a letter to the landlord stating that the tenant needed her help. The tenant's mother has personal home-care, but they don't do laundry, dishes or any cleaning, and that's been left up to the tenant's daughter.

When the tenant's daughter was out on the driveway, she was spraying soap on chalk that was on the concrete, trying to get the marks off. There has been no criminal behaviour. When she sings, she has headphones on.

The tenant is trying to sell so that she and her mother can get into assisted living. Social workers are going to help with getting the manufactured home straightened out for sale, because the tenant can't do it and her daughter can't do it fast enough. A few people have viewed the tenant's home.

Analysis

I have reviewed all of the evidentiary material, particularly the Decision dated August 11, 2020. In addition to the terms of the settlement as described above, it states: "Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute."

I cannot change a Decision already made by another Arbitrator, and given that the tenant agreed to the terms, free of duress or coercion, and that the tenant understood that the terms are binding and enforceable, it is a final and binding Decision.

The tenant agreed that her daughter and grandchild will no longer occupy the site after August 31, 2020, and there's no dispute that the tenant's daughter still resides there and continues to be disruptive to other tenants in the manufactured home park. The 4th term states that if the tenant breaches the tenancy agreement, park rules or the settlement agreement, the landlord may file an application to end the tenancy prior to February 28, 2021.

I find that the landlords have established that the tenant has breached the agreement made on August 11, 2020 and the landlords are entitled to an Order of Possession effective earlier than February 28, 2021. As sought by the landlord, I grant an Order of Possession in favour of the landlords effective on December 15, 2020.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlords in that amount.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective at 1:00 p.m. on December 15, 2020.

I hereby grant a monetary order in favour of the landlords as against the tenant pursuant to Section 60 of the *Manufactured Home Park Tenancy Act* in the amount of \$100.00.

This order is final and binding and may be enforced.

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: November 27, 2020

Residential Tenancy Branch