



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, RR, RP, OLC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- an order to cancel a One Month Notice to End Tenancy for Cause pursuant to section 40;
- an order that the landlord make repairs to the rental unit pursuant to section 27 of the *Act*;
- an order to reduce/recover the rent for repairs, services or facilities agreed upon but not provided pursuant to section 58 of the *Act*; and
- an order for the landlord to comply with the *Act*, regulation and/or tenancy agreement pursuant to section 55 of the *Act*;
- recovery of the filing fee pursuant to section 65 of the *Act*.

The tenant attended with the advocate KC (“the tenant”) and called the witness NN, the tenant’s social worker, to provide affirmed testimony. The landlord PS attended with her two sons (“the landlord”). All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

I informed the parties that in the event I dismissed the tenant’s application to cancel the Notice issued in compliance with the *Act*, I was required under section 45 of the *Act* to grant an Order of Possession in favour of the landlord. Section 45 states as follows:

45 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Preliminary Issue #1 – Unrelated Claims

The tenant's application included unrelated claims in addition to the tenant's application to dispute the landlord's One Month Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application pertains to disputing a notice to end tenancy, therefore, I find that the additional claims are not related to whether the tenancy continues. Therefore, all the tenant's claims except for her application to dispute the landlord's Notice are dismissed, and I grant the tenant liberty to reapply for these claims subject to any applicable limits set out in the *Act*, should the tenancy continue.

Preliminary Issue #2 – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

All parties appeared upset, argumentative and accusatory throughout the hearing. During the conference, the parties interrupted each other and the Arbitrator. Offensive accusations and language were exchanged. The landlord continually raised the issue of water and power delivery to the site which were irrelevant to the hearing of the cancellation of the One Month Notice. The parties were warned several times to stop interrupting, cease talking or repeating themselves, and to refer to only relevant matters. As a result of the conduct of the parties, the hearing was lengthy and lasted 88 minutes.

The Arbitrator acknowledges the helpful and supportive representation of the tenant's advocate, the written submissions, and the attendance of the tenant's social worker throughout the hearing.

Issue(s) to be Decided

Is the tenant entitled to the following:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The parties spent the first 45-minutes of the hearing in discussion with the Arbitrator about a possible mediated outcome. The effort did not result in any agreement and the arbitration continued.

As stated above, during the hearing, the parties showed an acrimonious relationship as evidenced by their contradictory testimony, use of unacceptable accusatory language towards each other, and mutual hostility.

The landlord attended with her two sons who confirmed the landlord's testimony.

The parties agreed the tenant has two mobile homes located on the site rented to her by the landlords where she lives with a man identified as "K." who did not attend as a witness. The verbal tenancy began on July 1, 2019 for \$400.00 monthly.

On September 24, 2020, the landlord issued and served a One Month Notice in the RTB form requesting that the tenancy end on November 1, 2020. The tenant brought an application to dispute the Notice on September 25, 2020 within the dispute period.

The reasons given for the issuance of the Notice were the following:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*

The landlord relied primarily on the first ground, that is, that the tenant *significantly interfered with or unreasonably disturbed another occupant or the landlord*. The landlord testified that K threatened to kill A.M., another resident of the park over a dispute about a small amount of money and the tenant warned the threatened person to be careful. The landlord also testified that the tenant and K. repeatedly drive dangerously in the park.

The landlord submitted a written statement from A.M. which stated in part as follows:

On the morning of March 25, 2020 [tenant] informed me that we need to start locking our doors all the time because her partner [K.] has apparently lost it and was coming to kill me last night and that she had to stop him a few times that night from coming over. She said that she was scared for my life...

... At this point I do not feel comfortable in my own home with not knowing what will happen next. When will they come knocking again? Is he going to come over when its just my daughter here? What will happen then? ...

I have been a tenant here for 3 years now and never had I had a problem with any other tenants until [tenant and K.] moved in. I have voiced my concerns to the landlords [names]. They are doing the best they can to keep peace and safety of all the tenants here.

There have been many times of hearing screaming and yelling from their trailer. When we go outside to see all you can hear is him yelling violently and her yelling please stop.

The landlord issued two written warnings to the tenant; the warnings also stated that the water and electricity will be ended to the site because of repairs needed before freeze-up. The tenant acknowledged receipt, copies of which were submitted as evidence.

The tenant submitted written submissions prepared by her advocate who was present at the hearing.

The submissions stated that the tenant is 83-years old, is willing to vacate the unit, and is unable to find alternative housing. The tenant called as a witness the social worker NN who provided a letter, a copy of which was submitted, confirming that the tenant is seeking housing and that no options will be available for some months.

The tenant denied all allegations about unsafe driving and the claim of the threat. Part of the submissions state:

*There is a severe health risk to the Tenant being forced to move out of the rental unit prematurely due to her age and the presence of the global pandemic.
Consideration of such action should be deemed “unconscionable” under the Act.*

The tenant stated that the landlord has no cause to issue the Notice and it should be vacated.

The landlord stated there was significant interference with the occupant of another unit whose life had been threatened and by the unsafe driving of the tenant and K in the park. The landlord requested an Order of Possession on two days notice.

Analysis

Section 40 of the Act allows a landlord to end a tenancy on one month’s notice for certain reasons.

Section 40(1)(c) of the Act states in part:

Landlord’s notice: cause

40 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

***(c) 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,...***

Pursuant to the Act, and based on the submissions of both parties, the landlord issued the Notice dated September 24, 2020; the tenant acknowledged service effective

September 24, 2020 and filed an application to dispute on September 25, 2020 within the time period allowed.

The landlord must now show on a balance of probabilities, which is to say, it is more likely than not, the tenancy should be ended for the reasons identified in the Notice.

In reaching my Decision, I have considered the documentary evidence and the testimony of each of the participants. Only relevant, admissible portions of the considerable testimony is referenced.

Given the contradictory testimony and positions of the parties, I must turn to a determination of credibility.

Considered in the testimony and evidence in its totality, I find the landlord's submissions to be persuasive as supported by the landlord's sons and the warning letters. The landlord provided credible testimony.

Based on the foregoing, I prefer the landlord's evidence to the tenant's version of events. For these reasons, where the evidence of the parties' conflicts, I prefer the landlord's version.

Based on the parties' uncontradicted testimony as well as a review of the Notice, I find the Notice complied with section 45 of the *Act*.

I accept the landlord's testimony that they verbally informed the tenant many times that she must cease behaviour found objectionable and offensive. I find the landlord has provided sufficient written warning to the tenant by providing her with two letters. While these letters were intended as notices to the tenant that she must vacate, I find they provided details of the landlord's complaints so that there is no doubt that the tenant was informed of the reasons why the Notice was issued.

I acknowledge that the landlord is concerned about repairs that need to the site and has repeatedly warned the tenant that power and water may be ended soon as the surface pipes will freeze. Although the landlord repeatedly referred to these repairs, I do not consider this relevant in reaching my Decision that the landlord has established adequate cause for the issuance of the Notice.

The tenant acknowledged she knew that the landlord intended to issue the Notice if the complaints did not stop. The tenant acknowledged she was willing to vacate the site and was looking for housing elsewhere. I find the tenant was aware of the landlord's

complaints and the nature of the behaviour they and other occupants of the park found objectionable. I find the tenant was cognisant of why the landlord was seeking to end the tenancy.

Considering the totality of the landlord's evidence, I find that the landlord has met the burden of proof on a balance of probabilities that the tenant significantly interfered with or unreasonably disturbed the landlord and the threatened occupant of the park. As a result, I find the landlord has established grounds for the issuance of the Notice under section 40(1)(c)(i). I find the tenant has engaged in disturbing behaviour in repeatedly driving in an unsafe manner in the park and by the threatening of another occupant as testified by the landlord and confirmed by the statement of A.M.. I find the landlord has met the standard of proof required.

I therefore dismiss the tenant's application to cancel the Notice and I uphold the Notice.

Referenced earlier, section 45(1) of the *Act* reads as follows:

***45 (1)** If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on my decision to dismiss the tenant's application for dispute resolution and my finding that the landlord's Notice complies with the *Act*, I find that this tenancy ended on the corrected effective date in the Notice of October 31, 2020.

As the tenant is still in occupation of the unit, the landlord is therefore entitled to an Order of Possession effective two days after service.

Notice to Public Trustee

I find I am unable and unauthorized to assess serious issues affecting the tenant. I direct the landlord to immediately provide a copy of this Decision and Order to the Public Guardian and Trustee as follows:

Public Guardian and Trustee of British Columbia
700-808 West Hastings Street
Vancouver, British Columbia
V6C 3L3
Ph: 604.660.4444
Fax: 604.660.0374

Conclusion

I grant an Order of Possession to the landlord effective two days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be enforced as an order of the Supreme Court of British Columbia.

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This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under the *Manufactured Home Park Tenancy Act*.

Dated: November 29, 2020

Residential Tenancy Branch