



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TYEE MOBILE HOME PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ET, FFL**

Introduction

This expedited hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* ("the Act") for:

- An order for an early termination of tenancy and an Order of Possession for an immediate and severe risk pursuant to section 49; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 65.

The tenant attended the hearing and the landlord was represented at the hearing by the park's owner, TG ("landlord"). As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's notice of expedited hearing and related documents, the landlord acknowledged service of the tenant's evidence. Neither party was concerned with timely service of documents.

Issue(s) to be Decided

Should the tenancy end early due to an immediate and severe risk from the tenant?
Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The

principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. He is the owner of the manufactured home park. The park is very old, at least 50 years old, however he doesn't know when it first started operating. He and his wife purchased the park in 2006 and made upgrades. The tenant moved into the park in 2009 and the tenant owns his own manufactured home in the park. The parties agree there is an "electrical shed" on the tenant's site which distributes electricity to the neighbouring sites in the park.

In late September, one of the sites in the park started having issues. An electrician was called in and located a break in that neighbour's electrical line. The break was located underneath this tenant's manufactured home. As a temporary measure, an over-ground, aluminum shielded tech cable was strung from the electrical shed, along the tenant's lot, across another lot and into the third lot experiencing the power outage.

On the afternoon of October 1st, 2020, the landlord saw the tenant and advised him of the neighbour's broken line under his home. The landlord testified the tenant acknowledged he knew the break was under his home, however the tenant disputes this. The landlord testified the tenant told him that the landlord would "*owe him a lot*" if the landlord wanted to dig under his home to restore the neighbour's power.

The landlord testified he told the tenant he was going to dig an alternate route along the tenant's driveway and across his front yard to give the neighbour her power. The tenant called the issue a "*f**king gong show*" and started calling the landlord a lousy landlord who is always picking on him. The landlord testified the tenant "*got in his face*" and told him that he "*would make the bruise on his face bigger*" as the landlord had a pre-existing bruise on his nose. The landlord testified the tenant then punched him in the chest. The force of the punch made the landlord stumble backward, causing him to fall on the tenant's wooden deck, causing injury to his arm. The landlord retreated to his own unit after the incident.

The landlord testified there were no witnesses to the incident as it happened during the day when most people were at work. The day after the incident, the landlord went to the RCMP to report the assault. Confirmation of the attendance at the RCMP was provided by the RCMP detachment. The landlord testified that the full police report would only be disclosed if the landlord made a Freedom of Information Access request that would arrive in 3 months. The landlord testified that he declined to file an assault charge against the tenant because it might do damage to the tenant's ability to work.

On October 4th, the landlord went to the hospital where the doctor examined him. The doctor's examination report was provided as evidence. The doctor notes bruises to the landlord's back, an approximately 4 x 8 cm bruise at chest wall, bony tenderness. The record concludes: soft tissue inj; assault symptomatic (unreadable). Photos of the injuries were also provided as evidence by the landlord.

Since the incident, the landlord states he is afraid to go to work at the manufactured home park and tries to leave before this tenant comes home from work. The landlord's health has been affected by the incident as has his mental well being. The landlord's wife, called as a witness, also testified she is scared something will happen to her husband when he goes to work and that she calls him three times a day to check on him.

The tenant gave the following testimony. The landlord's recollection of events is foggy. He knew repairs to the neighbour's electrical line needed to be done but the break isn't under his manufactured home, it's under the electrical shed. This is what the landlord had told him previously. He can't imagine why the break would be under his home and why the landlord is making this up.

The tenant testified he never struck the landlord on October 1st or at any other time. The bruises shown on the landlord's photos are old and yellow. They were not caused by anything the tenant had done. The tenant then testified he pays \$5,000.00 per month in taxes and doesn't deserve to be evicted. He stated he's upset he can't sell his manufactured home in the state it's in right now with the landlord disturbing the site with the electrical installation for his neighbour. He wants to keep living in the park and continue doing his job. He has no issue with the landlord doing what he needs to fix the neighbour's electrical lines and he never has had any issue with it. He's not a threat to the landlord, though they may disagree sometimes. The landlord is trying to take possession of his house during a pandemic which the tenant testified is unreasonable.

Analysis

Section 49 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under sections 40 and 48 for a landlord's notice for cause.

In order to end a tenancy early and issue an Order of Possession under section 49, I need to be satisfied that the tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;
- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, **and**

it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 40 of the Manufactured Home Park Tenancy Act [landlord's notice: cause] to take effect.

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

*... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)*

...

*Applications to end a tenancy early are for **very serious breaches only** and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker. **The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach**, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).*

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. The landlord and the tenant provide two diametrically opposite testimonies regarding the event of October 1st. While the landlord testified the tenant punched him in the chest, causing bruising and a trip to the hospital; the tenant denies the punch ever took place. I look to the documentary evidence to determine which testimony should be preferred.

The landlord provided an email from the RCMP corroborating his testimony that he went to the police after the punch took place. I find it reasonable that the landlord couldn't obtain an incident report from the police because it would arrive later than the scheduled hearing date for this expedited hearing. Second, I look to the examination report of the attending physician at the landlord's hospital. This report also corroborates the existence of bruises on the landlord's body consistent with an assault. Lastly, I have looked at the photos of the landlord's body and note the bruises in the places he testified were the result of the altercation on October 1st. I find the documentary evidence supplied by the landlord supports his version of events.

The tenant discounts the landlord's evidence, stating that the bruising is old and was not the result of anything he did. While this is possible, I find this is simply conjecture and is inconsistent with the remainder of the evidence before me. I find the fact that the landlord did not attribute the noticeable injuries to his face to the altercation with the tenant as further proof that the landlord's testimony is genuine and the one to be preferred in this case. Based on the evidence before me, I find the tenant punched the landlord in the chest, causing him to fall backward and cause injury to both his chest and arm.

Based on this finding, I am satisfied the tenant seriously jeopardized the health or safety or a lawful right or interests of the landlord. I find that the incident of October 1, 2020 causes the landlord to feel an imminent threat to his security and that it would be unreasonable for the landlord to wait for a notice to end tenancy under section 40 to [landlord's notice: cause] to take effect. The landlord is therefore entitled to end the tenancy early in accordance with section 49 of the *Manufactured Home Park Tenancy Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **\$100.00**.

This decision is legal, final and binding and 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: December 18, 2020

Residential Tenancy Branch