



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with the Landlords' Application filed on September 11, 2021, under the *Manufactured Home Park Tenancy Act* (the "*Act*") for an early end of tenancy pursuant to section 49 of the *Act* and to recover the cost of filing the application from the Tenant. The matter was set for a conference call.

The Tenant and the Tenants' Advocate (the "Tenants") and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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.

Issues to be Decided

- Is the Landlord entitled to an early end of tenancy and an Order of Possession, under section 49 of the *Act*?
- Is the Landlord entitled to recover the filing fee for this application pursuant to section 65 of the *Act*?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on August 1, 2018, as a month-to-month tenancy. Rent in the amount of \$466.00 is to be paid by the first day of each month. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that on July 29, 2021, they received a message from another occupant of the park that the Tenant's son had been firing a BB gun at another occupant's home. The Landlord testified that when they attended the property, they noted a large number of pellets on the ground around the home and shot marks on the home.

The Landlord testified that they went over to the Tenant's site to speak to them, and the Tenant's son answered the door and proceeding to scream and swear at the Landlord. The Landlord testified that the police were called but that before the police attended the property, the Tenant's son left. The Landlord testified that when the police attended the property, they took their statement and advised them that they knew who the Tenant's son was and that they would search for them and start an investigation.

The Landlord testified that the next day they attended the Tenant's rental site and served a One-Month Notice to end tenancy on the Tenant; and that during this service, the Tenant's son came out of the home and started yelling and swearing at the Tenant and the Landlord. The Landlord testified that they again called the police but that the Tenant's son left the property before the police arrived.

When the Landlord was asked to provide testimony as to why they had waited 43 days from the date of these incidents to file for this expedited hearing under section 49 of the Act, the Landlord testified that they always try to work with a tenant when there is a problem and that they hoped the Tenant would leave the property under the One-Month Notice to end tenancy that they had issued. The Landlord testified that when the Tenant did not move out in accordance with their notice to end tenancy, and they received the Tenant's Notice of Hearing documents, showing that the Tenant had filed to dispute the Notice to end tenancy and the hearing for that dispute was not until December 13, 2021,

they decided that this was too long to wait and that for the safety of themselves and the other occupants of the park they decided to file for these proceedings.

Additionally, at the end of these proceedings, the Landlord then became argumentative with this Arbitrator, speaking loudly over the top of this Arbitrator when I attempted to render the final decision during these proceedings. In order to regain control of the hearing, the Landlord's phoneline was muted.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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

In order to end a tenancy early and issue an Order of Possession under section 49, a landlord has the burden of proving that:

- There is sufficient cause to end the tenancy such as; unreasonably disturbed another occupant, seriously jeopardized the health, or safety, or a lawful right, or interest of the landlord, engaged in illegal activity, or put the landlord's property at significant risk; and
- That it would be unreasonable or unfair to the landlord or other occupants to wait for a One-Month notice to end tenancy for cause under section 40 of the *Act* to take effect.

I have reviewed the Landlord's entire testimony and documentary evidence submissions to these proceedings, and I find that while the Tenant's conduct may have been disturbing to others, the Landlord's actions of waiting 43 days to file for these proceedings shows that on a balance of probabilities, the Tenant's conduct was not so severe that waiting for a Notice to take effect would be unreasonable.

Section 49 of the *Act* provides an opportunity for a landlord to end a tenancy without the need for issuing a Notice, in circumstances when a tenant has done something so

wrong that the need to wait for a Notice to take effect would be unreasonable. In this case, I find that the Landlord's own actions showed that they were willing to wait for a One-Month Notice to take effect and that this application is more in the nature of an attempting to use section 49 of the *Act* to jump the hearing queue with the Residential Tenancy Branch. Consequently, I find the circumstances of this case are not so significant or severe that it would have been unreasonable for the Landlord to have to wait for a One-Month Notice to take effect if there was sufficient cause to end the tenancy.

Therefore, I dismiss the Landlord's application for an early end of tenancy under section 49 of the *Act*, as I find it neither unreasonable nor unfair that the Landlord would need to wait for a One-Month Notice to take effect and for the required hearing process under that notice.

Section 65 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this hearing.

Conclusion

I dismiss the Landlord's application for an early end of tenancy and to recover their application fee. This tenancy continues until ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 18, 2021

Residential Tenancy Branch