



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT

Introduction

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

- the cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 40; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the tenant entitled to:

- 1) an order cancelling the Notice;
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement for the rental of a manufactured home site (the "**site**") starting November 1, 2018. Monthly rent is \$666.25 and is payable on the first of each month.

On May 31, 2021, the landlord served the tenant with the Notice by posting it to the door of the tenant's manufactured home. The tenant disputed the Notice on June 1, 2021. The Notice listed the reason for ending the tenancy as:

Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Notice provided the following details of the reason for ending the tenancy:

Tenant has been witnessed banging on his neighbors unit after 11:00 PM screaming and swearing at them. Scaring them and the neighbors around him. They are scared to say anything for fear he will do something to them.

The landlord submitted two warning letters sent to the tenant from 2019. These warning letters relate to the tenant's apparent breaches of the park rules (improper parking and improper exterior furniture). As the Notice is not related to breaches of this kind, such conduct is not relevant to this proceeding. I will not discuss these issues further.

Similarly, the landlord submitted a warning email and an unsigned complaint letter from June 2020 relating to the tenant allegedly driving in a manner so as to "burn out" his tires. Such conduct is not listed on the Notice as the basis for it being issued and is not therefore relevant to this proceeding.

The landlord submitted three complaint letters from tenants of the manufactured home park (the "**park**"). The first, dated May 29, 2021, states:

I [name redacted by landlord], pulled in about 11:17 PM period music playing loud from the trailer to the left behind me. I then heard the fellow saying things I cannot repeat too and about the lady right behind me. The fellow to the left yelling I think he yelled at [the tenant's neighbour RE] not sure of the name that he is here full time now and he has a motorbike, 5:00 AM every morning. The yelling and banging up till 11: 38 PM. The last slamming of his door.

I am nervous I live alone! But no one should have to let their family at home be treated in such a manner.

The second letter, dated May 30, 2021, is from RE. He wrote:

Once again we had trouble with our neighbor [the tenant] in [address of site].

During the day he was trying to clean up his trailer, which is an eyesore in its regular state. At one point he decided to change his clothes, so he stripped down to his underwear, out on his deck in front of anybody around. He spent most of the evening stomping around, slamming tools and building material on his deck. He began singing loudly after 11:00 PM my wife told him to quiet down he just got louder.

I looked out my window and there he was sucking on a crack pipe. I could see it clearly (glass pipe with steel wool inside).

He told my wife that he lives here now and can do whatever he wants.

[The tenant] then started yelling at my wife and started banging on the side of our RV. That is when my wife called [the landlord's husband]. She was terrified.

The third letter was dated June 2, 2021. It states:

On May 29 at approximately 11 PM my neighbor in the back row asked his neighbor to keep the music down. He told him to fuck off. Then he started swearing at the lady of a bunch of names. When they ignored him he started banging on their trailer window with his hand, then with a broom. Please note he lives in [address of the site] and his neighbors live in [address of RE's manufactured home site].

The tenant did not deny having a confrontation with his neighbours on May 29, 2021. He adamantly and vociferously denied that he used hard drugs, as alleged by RE in the May 30, 2021 letter.

The tenant stated that the confrontation was part of an ongoing dispute between him and his neighbours. He testified that the neighbours were moved from another manufactured home site in the park to the site adjacent to his own because of noise complaints received about them from their then-neighbours about the volume of their television. (The landlord confirmed this). He testified that they were moved to the site next to him because, at the time, he was not living full-time on the site. He testified that he now is living on it full time.

The tenant testified that his neighbours played their television at an excessive volume when they relocated, which disrupted his quiet enjoyment of the site. He stated that this was the root cause of the animosity between them. He stated that he has never made a formal complaint about this to the landlord.

The tenant testified that on May 29, 2021, he was playing loud music on the site at 11:05 pm. He acknowledged that the park's quiet hours start at 11:00 pm. He stated that RE returned to the park around 11:15 pm and confronted the tenant about the noise. He testified that he turned the music down to an acceptable level. However, he also testified that he was frustrated with his neighbours as a result of the confrontation, and that he struck the cedar planter that divided his site from his neighbours' with a broom. He denied hitting the widow of his neighbours' manufacture home with his hands or a broom.

Analysis

Section 40(1) of the Act states:

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 in the manufactured home park by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park,

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy

So, the landlord bears the evidentiary burden to prove that the tenant acted so as to meet the requirement set out at section 40(1)(c) of the Act to end the tenancy. For the following reasons, based on the evidence presented at the hearing, I find that the landlord has satisfied its evidentiary burden and demonstrated that the ending of the tenancy is warranted.

I must first note that the Notice was only issued on the basis of the May 29, 2021 incident. As such, I have not considered any of the other evidence relating to the tenant's alleged misconduct, when making my decision. Additionally, the Notice makes no mention of the tenant's use of crack cocaine or any other drug. I explicitly make no finding as to whether the allegation contained in RE's May 30, 2021 letter is true.

The tenant admits that an altercation took place between himself and RE on May 29, 2021. He admits to have been playing loud music after 11:00 pm and to have used a broom to strike the planters between the his site and his neighbours' site. Broadly speaking, these details accord with the incident as described in the three letters. All three letters state that the tenant was playing music or singing. All three refer to banging, with the May 30 and June 2, 2021 letters referring to banging on the window (rather than the planter), and the June 2, 2021 letter referring to the tenant using a

broom. All three letters state the incident occurred between the tenant and the neighbours adjacent to him.

However, the rather than minimizing or downplaying the actions of the tenant (as the tenant did in his testimony), the letters portray the tenant's actions in a much more serious light. Indeed, the author of the first letter described feeling nervous as a result of the tenant's actions.

I find it more likely than not that the three letters provide a more accurate accounting of the tenant's actions on May 29, 2021 than the tenant's testimony. I find that the tenant's testimony was self-serving, and that he admitted the smallest amount of wrongdoing possible (singingly loud only 5 minutes past the park's quiet hours and hitting the planter, as opposed to the neighbours' window) so as to have his testimony somewhat accord with the descriptions of the incident by three different individuals (two of whom were uninvolved in the incident). I do not find it likely that, if he agreed to turn down his music when asked, without incident, that he would then feel so frustrated as to take a broom and strike at the planter between the sites. Rather I find it more likely that, following a loud confrontation with his neighbours about the volume of his music, and them walking away, he continued to express his displeasure by banging on his neighbours' windows.

As such, where the tenant's account of the incident differs from the accounts contained in the letters, I favour the accounts contained in the letters.

I find that on May 29, 2021 the tenant sang or played loud music past 11:00 pm, that he yelled and swore at RE when RE confronted him about this, and when RE returned to his manufactured home, the tenant pounded on the manufactured home's windows. I find that these actions in their totality amount to an unreasonable disturbance to the tenant's neighbours. Additionally, I find that such a disturbance is a response that is out of proportion to whatever complaint the tenant has with RE and his wife about the volume at which they have their television set.

As such, I find that the landlord issued the Notice for a valid reason.

I have reviewed the Notice and find that it complies with the form and content requirements set out at section 45 of the Act. The Notice is therefore valid. I dismiss the tenant's application to have it cancelled.

Section 48(1) of the Act states:

Order of possession for the landlord

48(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 manufactured home site if

- (a) the landlord's notice to end tenancy complies with section 45 [*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.

As I have found that the Notice complies with section 45 of the Act and as I have dismissed the tenant's application and upheld the Notice, I grant the landlord an order of possession. At the hearing, the landlord stated that she would want the order of possession effective 60 days after it was served on the tenant.

As the tenant has been unsuccessful in his application, I decline to award him the recovery of his filing fee.

Conclusion

I dismiss the tenant's application.

Pursuant to section 48 of the Act, I order that the tenant deliver vacant possession of the site to the landlord within 60 days of being served with a copy of this decision and attached order(s) by the landlord.

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 29, 2021

Residential Tenancy Branch