Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET, FFL**

Introduction

The hearing was convened as a result of the Landlord's application under the *Manufactured Home Park Tenancy Act* (the "Act") for:

- an early termination of the 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 pursuant to section 65.

The Landlord, represented by its President ("AK") and the President's husband ("RK"), and the Tenant attended the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

AK testified that the Notice of Dispute Resolution Proceeding and the Landlord's evidence ("First NODR Package") for the original hearing scheduled for October 28, 2021 was served by posting it on the Tenant's door on October 14, 2021. The Landlord submitted a Proof of Service on Form RTB-9 to confirm service. I find that the First NODR Package was served on the Tenant in accordance with section 89 of the Act. AK stated that the First NODR Package was also served on the Tenant by email. This service by email was performed by the Landlord at the request of the Tenant for the reasons stated below. The Tenant acknowledged she received the First NODR Package by email from the Landlord.

AK testified that the Landlord had not been served with any evidence from the Tenant.

Preliminary Matter – Service of Notice of Rescheduled Dispute Resolution Proceeding

As noted above, the Landlord's application for dispute resolution was originally scheduled to be heard on October 28, 2021 ("Original Hearing"). However, as a result of a technical issue, it was necessary for the Residential Tenancy Branch ("RTB") to reschedule the Original Hearing to be heard at the present hearing. The RTB prepared and emailed a Notice of Dispute Resolution Proceeding package ("Second NODR Package") that set out the new date and time of this hearing and it was emailed to the parties directly by the RTB on October 29, 2021.

The Tenant acknowledged that she requested the Landlord serve documents on her by email because she was the subject of a restraining and no-contact orders. Those orders prevented her from returning to her mobile home located on the manufactured home site ("Site") rented by the Tenant in the manufactured home park ("Park") owned by the Landlord. The Tenant testified she was living on the streets during that period and her phone was stolen. The Tenant stated that she needed more time to prepare for the hearing and made an oral request for an adjournment of this hearing so that she could seek assistance from an advocate and prepare to respond to the Landlord's application.

The Tenant stated that she was unable to attend at the Original Hearing. When I asked why she was not prepared for the Original Hearing, the Tenant stated that things were "going too fast". When I asked why she had not taken the additional time to prepare for this hearing she stated she needed more time.

The Tenant stated that she is a person with disabilities and that this was very stressful for her. She also stated that she was a good person, the occupant in the adjoining home site was a bad person and she just wanted to go home and be left alone.

AK objected to the Tenant's request for an adjournment. She stated that the Tenant was served with the First NODR Package that provided her with 2 weeks to prepare for the Original Hearing. AK submitted that, as the Original Hearing was rescheduled, the Tenant had additional time to prepare for the hearing today. AK stated that the hearing of the Landlord's application had already been delayed and that any further delays would be prejudicial to the Landlord given the serious nature of the application and the immediate and severe risk posed by the Tenant toward another occupant of the Park.

AK stated the Tenant called her on October 28, 21 and advised that she had returned to the Site. AK stated that, during that call, she advised the Tenant that the Original Hearing had been rescheduled and that the RTB would be sending a new notice setting out the date and time for the rescheduled hearing. The records of the RTB indicate that the Second NODR Package was emailed to the parties on October 29, 2021, being 10 days before this hearing.

The Respondent Instructions for Expedited Hearing which formed part of the Initial NODR Package stated:

> **Respondent Instructions for Expedited Hearing**
>
> **If you plan to respond to this application, copies of your evidence must be served on the applicant and received by the Residential Tenancy Branch not less than two days before the hearing**
>
> **If you fail to respond within the time limit, an arbitrator may resolve this dispute solely on the submissions of the applicant without further notice to you**
>
> **Important Information**
>
> The Residential Tenancy Branch has received an Application for Dispute Resolution against you. The Director of the Residential Tenancy Branch has set this matter down for an expedited hearing.
>
> An expedited hearing is a formal process to resolve extremely urgent and emergency disputes between landlords on short notice to the respondent. The Residential Tenancy Branch makes final and binding decisions for disputes on tenancies under the Residential Tenancy Act and Manufactured Home Park Tenancy Act. You or a representative acting on your behalf are required to participate in an expedited hearing on the date and time outlined on the attached Notice of Dispute Resolution.
>
> These instructions will provide information on what you need to know about the expedited hearing process. For full details, visit www.gov.bc.ca/landlordtenant/dispute.

Responding and Submitting Evidence

You may respond to this application and submit evidence to disprove the claim(s) made against you by the applicant(s).
Evidence must be submitted to the Residential Tenancy Branch and identical copies served on all applicants at least two days before the hearing date. Evidence should be relevant, concise well-organized and legible. Documents must be clearly labeled and pages must be numbered. Remember to keep a copy for yourself.

Deadlines for submitting evidence are critical. Copies of all evidence must be received by the Residential Tenancy Branch not less than two days before the hearing**. Evidence submitted after this deadline may or may not be considered by the arbitrator.**

Serving Evidence to Residential Tenancy Branch:
To upload evidence to the Residential Tenancy Branch, log into the Dispute Access Site at https://tenancydispute.gov.bc.ca/DisputeAccess/ using your Dispute Access Code. You can find your Dispute Access Code on the Notice of Dispute Resolution Proceeding.

If you are unable to upload evidence electronically, please see www.gov.bc.ca/landlordtenant/evidence for alternate methods for submitting evidence.

Rules 7.8 and 7.9 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") provide:

7.8 Adjournment after the dispute resolution hearing begins

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.

A party or a party's agent may request that a hearing be adjourned.

The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

[Emphasis in italics added]

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party

RoP 7.8 provides that, at any time after the dispute resolution hearing begins*,* the arbitrator may adjourn the dispute resolution hearing to another time. As the Tenant was having difficulty articulating why she required an adjournment at the beginning of the hearing, I deferred making a decision in the event the Tenant was able to provide an adequate response to her request for an adjournment other than for she needed more time.

After hearing the testimony and submissions of the parties, I find:

1. The Tenant admitted receiving the First NODR Package which included the Respondent Instructions set out above. The Tenant admitted that she did not attempt to attend the Original Hearing. If the Original Hearing had not been rescheduled by the RTB until today, the Tenant would not have had the opportunity of being heard at all. I find that the Tenant had sufficient notice of the Original Hearing and this hearing;
2. The Respondent Instructions which formed part of the Original NODR Package clearly outlined the expedited hearing process and that it is a formal process to resolve extremely urgent and emergency disputes. I find the Tenant

was informed of the urgency of this proceeding and that she was required to take immediate steps to respond to it;

3. the Tenant had the benefit of more than 3 weeks prior to the Original Hearing and then 9 clear days to prepare for this hearing. The Tenant was vague when I requested reasons for her failure to obtain counsel or an advocate prior to the hearing. I find that by failing to take sufficient proactive measures in the period leading up to the hearing, the Tenant's own inaction or neglect contributed to her lack of representation and help for this hearing; and
4. The Landlord's application for early termination of the lease is based on the Landlord's position that the Tenant poses an immediate and severe risk to another occupant at the Park.

Based on the foregoing, I find the potential prejudice to the Landlord, and other occupants of the manufactured home park outweighs the Tenant's opportunity to be given more time to seek assistance for this hearing. I dismiss the Tenant's request for an adjournment.

Issues to be Decided

Is the Landlord entitled to:

- an early termination of tenancy and Order of Possession?
- recover the filing fee for this application from the Tenant?

Background and Evidence

While I have turned my mind to all 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 principal aspects of the Landlord's application and my findings are set out below.

The tenancy for the Site commenced on November 1, 2009 on a month-to-month basis. The rent is currently $362.00 payable on the 1st of each month.

AK testified that on or about January 31, 2021 there was an incident (the "Incident") in the Park involving the Tenant and the occupant ("Neighbour") living in a mobile home located on a home site immediately adjacent to the Site. AK stated the police were called and attended at the Park as a result of the Incident. AK testified she did not know

all of the particulars of the Incident because the Tenant, the Neighbour and other occupants of the Park had not been forthcoming regarding the Incident

AK stated the Incident involved the Tenant waiving a machete at the Neighbour. AK admitted that she does not know whether the machete was real or made of plastic. AK stated that the Tenant was charged with a total of 5 offences on January 31, 2021 and April 24, 2021 under the *Criminal Code of Canada* and the *Body Armour Control* Act in relation to the Incident.

AK stated that she understood that, because of the Incident, a restraining Order had been issued by the BC Provincial Court ("BCPC") on the Tenant which prohibited her from going onto the Park. AK stated the Tenant was released from the restraining order on a later date and that an Order issued by the BCPC had been issued requiring the Tenant have no contact with the Neighbour.

To corroborate her testimony, AK submitted into evidence a copy of a Release Order of the BCPC dated May 12, 2021 ("Release Order") setting out the offences charged against the Tenant. In summary, the Release Order states the Tenant was charged with a total of 5 offences under the *Criminal Code of Canada* and the *Body Armour Control Act*.

AK testified the Tenant was found guilty of 3 of the 5 offences she had been charged with. The Landlord submitted a docket report to corroborate her testimony.

AK stated the Tenant called her on October 28, 2021 and advised her that there was now a no-contact Order and that the Tenant had returned to the Site. The Tenant also advised that there was no electrical service at the Site. AK stated that she made immediate arrangements to have the electrical service restored, at the Landlord's expense, to prevent freeze-up of the water supply lines that could adversely impact other occupants of the Park. AK stated she advised the Tenant, during that phone call, that the Original Hearing had been rescheduled and that the RTB would be sending a new notice setting out the new date and time for the rescheduled hearing.

The Tenant admitted to pleading guilty to 3 of the 5 offences pursuant to a plea arrangement. The Tenant admitted the offences were related to the Neighbor and they had occurred in the Park. The Tenant stated that she should not have agreed to plead guilty to any of the offences. She stated she was a good person and wanted to live her life. She stated that the Neighbour was a bad man and was causing problems but did not elaborate on the nature of those problems.

Analysis

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 this case, the onus is the Landlord to establish on a balance of probabilities that it is entitled to an order for an early end of the tenancy.

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 section 40 for a landlord's notice for cause.

The conditions that must be met in order for a tenancy to be ended early are set out in subsections 49(2) and (3) as follows:

Application for order ending tenancy early

(2) The director may make an order specifying the date on which the tenancy ends and the effective date of the order of possession only if satisfied that

(a) the tenant or a person permitted in the manufactured home park by the tenant has done any of the following:
- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park;
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- (iii) put the landlord's property at significant risk;
- (iv) engaged in illegal activity that
  - (A) has caused or is likely to cause damage to the landlord's property,
  - (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the manufactured home park, or
  - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (v) caused extraordinary damage to the manufactured home park, and

(b) it would be unreasonable, or unfair to the landlord or other occupants

> of the manufactured home park, to wait for a notice to end the tenancy under section 40 *[landlord's notice: cause]* to take effect.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

Residential Tenancy Branch Policy Guideline ("RTBPG") *Number 51* [Expedited Hearings] provides guidance on a landlord's application for dispute resolution to seek for an early end of tenancy pursuant to section 49 of the Act. The following excerpts of that Policy are relevant to the Landlord's application:

> The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits.
>
> 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).
>
> 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).

RTBPG Number 32 [Illegal Activities] provides guidance on the meaning of "illegal" and what may constitute an "illegal activity". Excerpts from that Policy are:

> The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw

which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

The illegal activity must have some effect on the tenancy. For example, the fact that a tenant may have devised a fraud in the rental unit, written a bad cheque for a car payment, or failed to file a tax return does not create a threat to the other occupants in the residential property or jeopardize the lawful right or interest of the landlord. On the other hand, a methamphetamine laboratory in the rental unit may bring the risk of violence and the risk of fire or explosion and thus may jeopardize the physical safety of other occupants, the landlord, and the residential property.

A tenant may have committed a serious crime such as robbery or physical assault, however, in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property.

The test for establishing that the activity was illegal and thus grounds for terminating the tenancy is not the criminal standard which is proof beyond a reasonable doubt. A criminal conviction is not a prerequisite for terminating the tenancy. The standard of proof for ending a tenancy for illegal activity is the same as for ending a tenancy for any cause permitted under the Legislation: proof on a balance of probabilities.

The Tenant admitted pleading guilty to offences under the *Criminal Code of Canada,* and as such, they constitute "illegal activities" under section 49(2) (a)(iv) of the Act. The Tenant admitted the illegal activities occurred at the Park and involved the Neighbour. Based on the Landlord's undisputed testimony that the Tenant was waiving a machete at the Neighbour, I find that the Tenant's illegal activities at the Park adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant of the Park.

The Tenant has returned to the Site. The undisputed testimony of the Landlord was the Neighbour is still living at the adjoining home site to the Site, and that by the Tenant's own admissions, there are continuing issues between the Tenant and Neighbour. I find there is potential that the Tenant may commit further illegal acts against the Neighbour. I also find the issuance of the original restraining Order and the continuing no-contact Orders issued by the BC Provincial Court requiring the Tenant to have no contact with the Neighbour provides evidence that the Tenant's illegal activities are sufficiently serious to warrant termination the tenancy. Accordingly, I am satisfied that it would be unreasonable or unfair to the Landlord and other occupants of the residential premises to wait for the Landlord to serve a One Month Notice to End Tenancy to take effect pursuant to section 40 of the Act.

Based on the foregoing, I find that the Landlord has satisfied its burden of proof and is entitled to an Order of Possession pursuant to section 49 of the Act. The Landlord agreed that the Order of Possession may become effective November 23, 2021 to give the Tenant two weeks from the date of this hearing to arrange to sell the manufactured home or alternatively, remove it from the Site.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the $100.00 filing fee for this application.

Conclusion

For the reasons set out above, I grant the Landlord's application in its entirety.

The Landlord is granted an Order of Possession effective at 1:00 am on November 23, 2021. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 65 of the Act, I order the Tenant pay the Landlord $100.00 to reimburse the Landlord for the filing fee of its application.

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 18, 2021

Residential Tenancy Branch