



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding QT HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution, originally seeking remedy under the *Residential Tenancy Act* which was amended during the hearing to the *Manufactured Home Park Tenancy Act* (Act) as this matter relates to two sites in a manufactured home park. The landlord has applied for an order under section 49 of the Act to end the tenancy early and to receive an order of possession, due to health or safety issues, and to recover the cost of the filing fee.

Two agents for the landlord company, TN (agent) and QH (agent 2), the tenants, and a legal advocate for the tenants, JK (advocate) attended the teleconference hearing and were affirmed. Two witnesses for the landlord and four witnesses for the tenants attended the hearing but were not called to testify. The hearing process was explained to the parties and an opportunity to ask questions were provided. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Also, the landlord's audio evidence was excluded in full as it was not served on the other party as required by RTB Rule 3.10.4 and 3.10.5. Furthermore, the landlord was advised that all three files related to a "protection order" were excluded as the tiny thumbnail photo of the document was not legible and the link to the file could not be opened by the arbitrator.

Issue to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession for health or safety purposes under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

No tenancy agreement was submitted in evidence.

The landlord writes in their Details of Dispute the following:

The 2 tenants have threaten 3 other residence at the park on two separate occasion with the reporting of the two incidence to the RCMP. There are two voice recording one from the victim and one from the perpetrator. In addition, there are three application for restraint order against the perpetrator. Finally, the 2 tenants have not paid November rents and has no intention to pay per the text message.

The landlord was advised that I could not open any of the three restraining orders that the landlord describes above. The landlord confirmed that they did not submit any emails or texts describing health or safety issues.

The parties were advised that I did not need to hear from the tenants or the advocate further as the landlord did not set out what the threats were in the Details of Dispute nor did the landlord provide any supporting written documentation that the undersigned could access during the hearing to support that other tenants have obtained restraining orders from a court regarding the respondent tenants in this matter.

Analysis

Based on the above, I find the following.

Section 49 of the Act indicates:

Application for order ending tenancy early

49(1) A landlord may make an application for dispute resolution to request an order

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 40 [*landlord's notice: cause*], and

(b) granting the landlord an order of possession in respect of the manufactured home site.

(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.

[emphasis added]

The burden of proof is on the landlord to prove that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end tenancy under section 40 to take effect. I find that by failing to indicate in their application what the specific threats were, including dates and time and the people involved, which prompted this application, I find that it would be contrary to the Principles of Natural Justice to allow the hearing to continue with only testimony from the landlord witnesses during the hearing to substantiate the application, **without giving notice to the tenants prior to the hearing what the specific allegations are.** Furthermore, the landlord requested to have the matter adjourned to allow the landlord to submit additional evidence, which was denied as RTB Rule 10.2 applies and states:

10.2 Applicant's evidence for an expedited hearing

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

I find the landlord was required to submit **all evidence** that the applicant landlord intended to rely on at this expedited hearing at the time the application was made, which the landlord failed to do.

In addition, the landlord did not provide any evidence that a 1 Month Notice to End Tenancy for Cause (1 Month Notice) has been served on the tenants.

As a result of the above, I find that the landlord has failed to properly give notice to the tenants on what specific threats or health or safety issues exist, that would justify an application under section 49 of the Act. Consequently, **I refuse** to hear this dispute pursuant to section 52(2)(b) of the Act, which applies and states:

Starting proceedings

52(2) An application for dispute resolution must

(a) be in the applicable approved form,

(b) **include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, ...**
[emphasis added]

While the landlord has liberty to reapply, the landlord is cautioned to ensure that full particulars of the dispute or provided in the application itself, versus attempting to rely on witness testimony at the hearing to explain the purpose of the application.

The filing fee is not granted as this application has been refused as noted above.

Conclusion

The landlord's application is refused under section 52(2)(b) of the Act.

The tenancy shall continue until ended in accordance with the Act.

The filing fee is not granted as noted above.

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: December 3, 2021

Residential Tenancy Branch