



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHEOL AND HEE HOLDING GROUP
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant, the tenant's advocate and an agent for the landlord 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 called witnesses D.B. and D.D. who both provided affirmed testimony.

Both parties agreed that this application for dispute resolution should have been made pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"), and not the *Residential Tenancy Act* as the subject rental property is a pad rental, not a unit rental. I amend the tenant's application to be made pursuant to the *Act*.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

The advocate submitted that the landlord was served with the tenant's application for dispute resolution via registered mail on October 9, 2021. The agent confirmed receipt

of the tenant's application for dispute resolution. I find that the landlord was served in accordance with section 89 of the *Act*.

Both parties agreed that they were served with the other's evidence in accordance with the timelines set out in the Residential Tenancy Branch Rules of Procedure (the "*Rules*"). I find that both parties were sufficiently served for the purposes of this *Act*, with the other's evidence, pursuant to section 71 of the *Act*.

I note that section 48 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 40 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 65 of the *Act*?
3. Is the landlord entitled to an Order of Possession for Cause, pursuant to section 48 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below. As stated in *Rule 7.4*, evidence must be presented by the party who submitted it, or by the party's agent. Unpresented evidence has not been considered.

The tenant testified that he moved onto the subject rental site approximately three years ago. The agent testified that he does not know precisely when the tenant moved onto the subject rental site because the tenant originated as an occupant who lived with tenant W. on the subject rental site. The agent testified that tenant W. passed away in

February or March of 2020 and the tenant started paying rent in April of 2020. The agent testified that the tenant has become the defacto tenant and the landlord has accepted rent from the tenant since April of 2020. The above sequence of events was not contested by the tenant. Both parties agree that the pad rent is \$355.00 due on the first day of every month.

Both parties agree that the tenant's partner, witness D.D., who resides with the tenant, was personally served with a One Month Notice to End Tenancy for Cause (the "One Month Notice"), at the subject rental property on September 28, 2021. The One Month Notice is dated September 28, 2021 and states that the tenant must move out of the subject rental property by October 31, 2021.

The One Month Notice was entered into evidence and states the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant has not done required repairs of damage to the unit/site; and
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Details of Cause section of the One Month Notice states:

The tenant has not complied with a letter to clean a messy yard and has numerous complaints of disturbing the peaceful enjoyment of his neighbours.

The agent testified that the tenant and the tenant's guests have left debris and garbage all over the tenant's pad and all over vacant pads surrounding the subject rental pad. The agent testified that the tenant throws large outdoor parties and that the guests of these parties cause significant disturbance to the neighbours and bring garbage with them which is left in the subject rental park. The agent testified that the tenant has been provided with numerous opportunities to clean the mess made by his guests but that the tenant has failed to do an adequate job and continues to allow homeless and other guests into the park who make a mess.

The agent testified that the tenant was first provided with notice to clean up his pad and the surrounding pads on December 10, 2020 via a Notice of Infraction. The December 10, 2020 Notice of Infraction was entered into evidence and states:

To: [the tenant]
Site: [the subject rental pad]
Re: yard
Date: By Dec18/20

This letter serves as a warning regarding inadequate maintenance of the premises shown above. The *Manufactured Home Park Tenancy Act* states in Section 26(2) “A tenant must maintain reasonable health, cleanliness, and sanitary standards throughout the manufactured home site and in common areas”.

The *Manufactured Home Park Tenancy Act* also states in Section 22 “A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: (b) freedom from unreasonable disturbance;”

These specific problems need to be rectified by the deadline above:

- All the yard and adjoining yard

The agent testified that the December 10, 2020 Infraction Notice was personally served on witness D.D. The December 10, 2020 letter bears witness D.D.’s signature. The tenant did not dispute receipt of the above letter.

Both parties agree that in response to the above letter, the tenant cleaned the subject rental site and surrounding area. The agent testified that the property was better after the tenant cleaned, but not great. The tenant testified that the property was cleaned up after the December 2020 Notice of Infraction.

The landlord entered into evidence photographs of the subject rental site and surrounding area taken on December 10, 2020 which show piles of garbage on and around the subject rental site.

The agent testified that the landlord received an email from the subject rental City dated April 1, 2021 which states:

The [subject rental City] Bylaw Department has been closely monitoring the accumulation of rubbish, garbage, and discarded material at multiple lots within [the subject rental park].

Our department has noticed some attempts at maintenance and cleanup of the properties, but as of April 1, 2021 there is still complaints concerning considerable amounts of unsightly materials, rubbish, garbage, shopping carts, mattresses, bike parts, tv parts, and other discarded materials. Once again, [the subject rental park] is still in violation of the [subject rental City] Good Neighbour Bylaw No. 2194, 2014, Section 7.

7. PROPERTY MAINTENANCE:

7.1 The Owner of a property is ultimately responsible for all activities on their Property which may constitute contravention of this bylaw.

7.4.1 Except as permitted under Section 7.3.1 and 7.3.2 of this Bylaw, no owner or occupier of Real Property shall cause, suffer or permit:

- a) Rubbish, Garbage and Discarded Material: All Owners shall not permit the accumulation of Rubbish, Garbage or Discarded Material upon Real Property and shall remove the same there from.

A patrol of the Park confirmed the following addresses still in violation:

- [subject rental site]
- [remainder of sites redacted for privacy]

As this concern is ongoing and causing multiple problems for residents within the park, the [subject rental City] Bylaw Department is giving the [subject rental Park] until April. 12, 2021 to ensure all six (6) above mentioned addresses are cleared of any discarded materials, mattresses, bike parts, tv parts, rubbish, garbage, and shopping carts. If these addresses are not brought into compliance within the given timeframe, a fine will be issued for each address in the amount of \$200.00 for "Permit Property to Become Unsightly. The fines for these addresses if not cleared will be forwarded to the Property Owner, [the landlord]. Additional fines may be issued for everyday in which these issues persist.

The agent testified that he is not sure if the above letter was provided to the tenant, but the tenant was verbally told to clean up the subject rental site. The agent entered into evidence photographs dated April 13, 2021 showing garbage all over the empty lots

adjacent to the subject rental site and garbage on the subject rental site. The agent testified that the tenant did not clean up the subject rental sites or adjacent lots.

The agent testified that the landlord received a bylaw ticket dated August 19, 2021 because the subject rental site was unsightly. The ticket in the amount of \$250.00 was entered into evidence. The date of offence cited on the ticket is May 4, 2021.

The agent testified that the tenant was next contacted to clean up the subject rental site and adjacent lots via two letters dated September 24, 2021. The first letter states:

You have a mess on your sight [sic], including your back porch and a vehicle in disrepair, the front yard and the shed.

YOU HAVE UNIT MONDAY SEPTEMBER 27, 2021 TO CLEAN THE SITE.

The second letter states:

This is a letter formally notifying you that the park does not allow the parking and use of RV's as secondary living spaces.

I was in the park around 5 pm yesterday and there was no RV, but at approximately 8 AM one was parked there.

THAT RV WILL NEED TO BE REMOVED BY TOMORROW MORNING.

The agent testified that the trailer was actually a fifth wheel, not an RV. The agent testified that the fifth wheel was parked in the lot adjacent to the tenant, where the tenant parks his vehicle. The agent testified that the fifth wheel was at the subject rental site for 2-3 days. The agent testified that the tenant stated that the fifth wheel was not his and refused to take responsibility for it. The agent testified that the landlord ultimately had the fifth wheel removed as the tenant refused to.

The advocate submitted that the fifth wheel was parked next to the subject rental property by the tenant's friend's parents as a place for the tenant's friend to stay. The tenant testified that he did not have anything to do with this and did not want his friend's fifth wheel in the adjacent lot. Witness D.D. testified that she and the tenant told their friend not to park his fifth wheel on the adjacent site and that it was only on the site for one day before the landlord had it removed.

The landlord entered into evidence photographs taken between September 24, 2021 and September 29, 2021 which show old building materials stacked against and around the manufactured home on the subject rental site. The fifth wheel in the September 24, 2021 photographs blocks the view of the adjacent lots. The agent testified that the garbage in the adjacent lots were still present in September 2021.

The agent testified that since serving the tenant with the One Month Notice, the tenant has not cleaned the subject rental site or adjacent lots. The tenant testified that he cleaned some of the property 3-4 months ago. Witness D.D. testified that the tenant was mistaken and that they have not cleaned the subject rental site and adjacent sites since December 2020. The tenant did not dispute this correction.

The tenant testified that he has not brought any of the garbage to the adjacent lots and it not responsible for the cleaning of the adjacent lots. The advocate submitted that the landlord has been negligent in maintaining and cleaning the subject rental park.

The tenant testified that the people who brought the garbage were tenant W.'s friends and that he "welcomed them" because they came from out of town. The tenant testified that he is not responsible for these people's actions. The tenant testified that other people also dump garbage on the lots adjacent to the subject rental property. The agent testified that tenant W. has been dead for nearly two years and that the people making the mess are now the tenant's friends and the tenant is responsible for their conduct. The agent testified that the tenant's guests have been the cause of numerous calls to the police.

The agent testified that there was a shed on the lot adjacent to the subject rental property where the tenant parks that was occupied by a homeless person using power from the subject rental property. The agent testified that the tenant refused to take responsibility for the shed and stated that it wasn't his and that he did not know the occupant. The agent testified that because the tenant refused to clear out the occupant, cut power or take responsibility for the shed, the landlord tore it down. The above testimony was not disputed by the tenant.

The landlord entered into evidence six copies of a form letter, each signed by a different tenant of the subject rental park. The letters are dated September 27, 2021 and state:

We the tenant's of [the subject rental park], do hereby back our owner of this property to evict, as well as enforce the cleanup and maintenance of all units that are making this park a major health and safety risk. [The subject rental property] is a particular problem with both, by inviting homeless, to not only live in vacant lots, and abandoned trailers and sheds, but supplies them with power as well. With the amount of garbage and discarded needles as well as human waste these places are being used for bike chop shops, as well as a general hang out area at all hours of the day and night. This has become a major safety concern for not only us at [unit of signatory], but the surrounding trailer as well.

The tenant called witness D.B., a tenant of the subject rental park. Witness D.B. testified that the tenant is only being evicted by the landlord because the tenant "got mouthy" with the agent. Witness D.B. testified that the tenant kept the subject rental site clean, but not now.

The advocate submitted that the warning provided to the tenant on September 24, 2021 is too vague to base an eviction for material breach and that the September 24, 2021 letter does not mention a material breach. The advocate submitted that to evict someone for a material breach, the tenant must be provided with a reasonable period of time to rectify the breach. The agent submitted that the timeframe provided on the September 24, 2021 letter, that being three days, was not a reasonable period of time for the tenant to clean the subject rental property.

Analysis

Based on the testimony of both parties, I find that the tenant was served with the One Month Notice on September 28, 2021, in accordance with section 88 of the *Act*. Upon review of the One Month Notice, I find that it meets the form and content requirements of section 45 of the *Act*.

Section 40(1)(c)(i) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted in the manufactured home park by the tenant has significantly interfered with or unreasonably disturbed another occupant of the landlord of the manufactured home park.

The tenant testified that some of the people leaving garbage on the adjacent lots to the subject rental property are not his friends, but the friends of the deceased tenant W.

The tenant also testified that he welcomed them into the subject rental park. I find, on a balance of probabilities, that the people welcomed into the park by the tenant, are the tenant's guests.

As stated above in section 40(1)(c)(i) of the *Act*, the tenant is responsible for the actions of people permitted on the property by the tenant. I find that the tenant is responsible for the actions of his guests. By the tenant's own testimony, the people he "welcomed" to the property brought garbage with them and left that garbage in the subject rental park.

Based on the agent's testimony, the communications from the subject rental City, the photographic evidence and the warning letters provided to the tenant, I find that the landlord has proved that the tenant's guests have created an unsightly mess of garbage. While others may also have contributed to the garbage pile, I find that this does not diminish the tenant's responsibility for the actions of his guests.

Based on the testimony of the agent and the complaint letters entered into evidence, I find that the majority of the garbage was left by people permitted on the property by the tenant. Based on the testimony of the agent and the complaint letters entered into evidence I find that the garbage left by the tenant's guests significantly interfered with and unreasonably disturbed the other tenants of the subject rental park. I find that it is unreasonable for other tenants to have to live with the garbage left by people permitted into the park by the tenant. I therefore uphold the One Month Notice and dismiss the tenant's application to cancel it.

Section 48(1) of the *Act* states:

- 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.

Since the One Month Notice was upheld and complies with the form and content requirements of section 45 of the *Act*, pursuant to section 48(1) of the *Act*, the landlord is entitled to a two-day Order of Possession.

As I have determined that the landlord is entitled to an Order of Possession pursuant to section 40(1)(c)(i) of the *Act*, I decline to consider if the landlord is entitled to an Order of Possession pursuant to any other subsection of section 40(1) of the *Act*. I note that the advocate's submissions regarding the allegation of material breach fall under section 40(1)(g) of the *Act* and are therefore not being considered as they are not relevant to my findings under section 40(1)(c)(i) of the *Act*.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 48(1) of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: February 16, 2022

Residential Tenancy Branch