



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Manufactured Home Park Tenancy Act* ("Act"), for an early termination of the tenancy and an order of possession – as he says the Tenant poses an immediate and severe risk to persons and/or property; and to recover the \$100.00 cost of their Application filing fee.

The Tenant, R.P., and the Landlords, C.C. and E.K., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant confirmed that he had received the Landlord's Notice of Hearing package and their evidence, and that he had reviewed it prior to the hearing. However, the Landlords said that they received a DVD from the Tenant in response, but that they could not read the contents of the DVD. The Landlords said that they tried to read it on different devices, but that they were unsuccessful. Pursuant to Rule 3.7:

All documents to be relied on as evidence must be clear and legible... To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

Accordingly, and pursuant to Rule 3.7, I decline to consider the Tenant's evidence submitted to the RTB, because I find that the Landlords did not have an opportunity to review it, given the unreadable format of the Tenant's evidence. However, the Tenant's testimony in the hearing is evidence before me.

Preliminary and Procedural Matters

The Landlords provided the Parties' email addresses in the Application, and the Parties confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlords that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Are the Landlords entitled to an early termination of the tenancy agreement, and an Order of Possession?
- Are the Landlords entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on September 1, 2021, with a monthly rent of \$850.00, due on the first day of each month. They agreed that the Tenant paid the Landlord a security deposit of \$425.00, and no pet damage deposit. They agreed that the Landlord still holds the security deposit in full.

In the hearing, the Landlord, E.K., explained their claim, as follows:

As stated in our dispute, [the Tenant] has gone against our notices not to have a freezer - an attractant to wildlife - outside. This is a 19-mobile home community. No one has a freezer on their deck. [The Tenant] is completely defiant, and says he will not remove it until he moves. The bears are coming out of hibernation, and have been sighted in the area.

I have nine different reports saying that a freezer should not be kept on a deck. Bears can smell frozen food a half mile away. There are nine different reports for bears – they all say freezers should not be kept unsecured outside.

We have elderly people 80+ years old. Someone had apples on their deck, and a bear came and . . .

The Landlord submitted links to eight news articles, “some written by Conservation Officials”, he said. He added that these articles address: “The irresponsibility of having a freezer in an unenclosed outside area (deck). Websites have been attached for your reference.”

In his written submissions, the Landlord said:

[The Tenant] is in total defiance and is confrontational with management and ownership. Additionally, [the Tenant] is a Search & Rescue volunteer, and would know about attractants. [The Tenant]’s flagrant disrespect for the safety of our 27 residents, should suffice for immediate eviction.

The Landlords submitted information they say is from a newsletter from the Yukon. They pointed to this newsletter as saying:

We humans should do more to minimize bear attractants, including the following:

...

- The unlocked outside freezer. Even locked, a grizzly or large black bear can break it open.

The Landlords submitted an article published for their area of the Province stating:

We’re seeing that even in areas we’ve saturated with education, people are not acting on advice to collect fruit. We’re seeing bird feeders, outdoor freezers, garbage carts and organics being stored outside. It is absolutely not acceptable to allow a bear to find food on your property.

...

Living on a forest edge means contact with bears is inevitable, which comes with a responsibility for us to better understand them and their behaviour. .

[emphasis added]

The headline of another article was “WATCH: Hungry bear ‘shops’ for food in outdoor freezer.”

In an article from Whitehorse, the author said that conservation officers are getting tired. It states:

They’re getting tired of the non-stop bear complaints. And they’re particularly tired of having to kill bears.

...

He insisted there is absolutely nothing appealing about sticking a rifle muzzle inside a culvert trap and shooting a bear in the head. Yet that's what they do with some repeat offenders which have become accustomed to easy spoils left around in somebody's yard, whether it's an aromatic can of garbage, dog food, or even an outdoor freezer.

Bears, said [senior conservation officer, G.], can smell the frozen contents of a freezer from half a mile away. .

[emphasis added]

Another headline said: "Young male bear shot and killed after breaking into outdoor freezer in West Vancouver".

In the hearing, the Landlord said:

He has been told that and he is very defiant. I don't know if it's being forgetful or malicious, but he's not keeping the deck tidy. There are Park Rules. He is posing a dangerous threat to the other residents.... there are tons of bears here. See the nine reports I sent with the evidence. All of the report mention freezers. I've given him a 10-day notice to move it, and I've offered to help him move it.

In the hearing, the Tenant said:

The Landlord has never given me any notice verbal or other wise, until a dispute about snow clearing. No written notice. In the March 10 letter in his evidence #2, I said I would defer to the RTB on the matter of the freezer, but not any arbitrary demands that he has given me to make. The freezer is a non-negligible concern. In his submissions on bears, from [the Yukon newsletter], it refers to unlocked freezers and not locked ones. And a freezer is below bird feeders, compost, etc.. . . and barbecues. And he hasn't raised any of those issues.

Compost bins are higher attractants than freezers and they are subsidized. He has never mentioned that a freezer is a higher risk attractant

Referring to BC the *Wildlife Act* – there are relatively minor fines under that Act. A complaint to a wildlife officer. Wildlife BC place puts freezers below 1% of attractants. Bird feeders, compost, fruit trees, many times as many.... Freezers are way down on that list should not elevate it into a major crisis.

The Tenant referred to the Landlord's evidence number two, and the Tenant's response to that evidence, which is contained in the Landlord's submissions, which are before me in evidence. The Landlords submitted evidence "Regarding the Deep Freeze", which includes:

- our inspection found that the deep freeze remains on the deck after initial denied request to have it there in the first place, and 2 verbal requests to remove it.
- Shortly before [the Tenant] moved into to [the rental unit], [the Tenant] asked if he could store his deep freeze on the porch/deck. I told [the Tenant], 'Deep Freezers are not allowed on an unenclosed porch due to the wildlife in the area'. [The Tenant] agreed and said he would place it in a safe location. Just before his move in date, I received a call from [S.], Park Manager, once again asking about the deep freeze. She asked me to speak to [the Tenant] about it. I again, met with [the Tenant] and told him that it would not be allowed on the porch/deck. I have never instructed [the Tenant] how to secure his deep freeze with locks and hasps.

In his response letter (which is part of the Landlords' evidence), the Tenant's comments in this March 10, 2022 letter to the Landlords included:

Regarding the deep freeze – In our early discussions you initially said I could not have my deep freezer on the deck. I accepted that and made plans to keep it in the back shed and run a power cord out to it. However, your agent [S.G.] spoke with you on my behalf and you changed your mind. [S.] informed me of your decision on August 31, 2021 and so I put it on the deck. You told me I would have to secure the lid, which is a common practice in this region with freezers stored on decks. I have installed staples and hasps on both front corners, of a type used for padlocks.

. . .

Your claim that freezers attract bears and cougars is without merit. Freezers are tightly sealed against air leakage for efficiency and to protect the food, which seals odours into the until. The smells of cooking on barbecue rigs are much greater attractant for bears and cougars than a scentless freezer. Many people around here have a barbecue on their patio or deck without issue.

I rely on your express consent as relayed to me by [S.G.] as permission for my freezer to be there. If an alternative is necessary, I take your eight months of silence on the matter as evidence you have acquiesced in allowing it to remain.

In short, I have no intention of removing it until I move out. I will of course defer to the Residential Tenancy Branch if you choose to raise it with them. Otherwise I consider your so-called formal notice to remove it as another vexatious and underhanded example of badgering in order to make it uncomfortable for me to remain.

[emphasis added]

The Landlord commented on the Tenant's evidence in this regard in the hearing, saying:

He only responds to eviction notices or 10-day notices; he is completely oblivious to any verbal requests. He does not take our authority as park owners, and as managers; he fights us, video tapes us - that's why I have to give these notices. He is non-responsive. He does not take any authority for us owing the park.

Where is he getting his information on freezers? Each and every single one of my reports notes freezers as an attractant. There are responsible conservation officers who are quitting, because they have to kill bears. He's totally irresponsible.

As for other attractants, such as a barbecue, I have explained to users how to clean barbecues after use. You have to burn it off. Every single person has been explained to.

Bird feeders? They are allowed from the end of November to... until as soon as bears start coming out of hibernation. And people can't have chickens. [The Tenant] also understood when he first moved in. He was told not to put the freezer there. The other attractants - they actually like gasoline cans. There are certain ones you can't get away with. No fruit trees are allowed in the park. There's not another freezer outside in our park. He doesn't seem to get this concept that they're an attractant. It doesn't matter the percentage - if it's one percent - I'm trying to protect 28 people.

I asked the Tenant why he has not moved the freezer from the deck, and he said:

I have so little room in this place, I'm downsizing from a three-bedroom to a two-bedroom place. I could move it into the kitchen, but that would take space.

Initially, he said I couldn't have the freezer on the deck. I said I'd have it in the shed and run a cord out to it. But a couple days later, his assistant said he had

changed his mind and would allow it. Now if it's such a small risk, I didn't think it was an emergency item to deal with, until I get a word from a higher authority, it's not more than an arbitrary demand. There's been no report of injury. Many people do, it is not uncommon around here.

Analysis

Based on the Landlord's documentary evidence and the Parties' testimony provided during the hearing, and on a balance of probabilities, I find the following.

The Landlords said that they submitted eight or nine reports stating that having a freezer on the deck of the residential property attracts bears. The Landlords submitted two newspaper articles and some news headings to support their assertion that outdoor freezers are a bear attractant, and therefore, a danger to people and property.

Generally, I would give less weight to a newspaper article being cited as a "report" from a source, such as a BC conservation officer. However, some of the articles quote conservation officers in a manner that supports the Landlords' assertions. Further, I find that the Landlords' submissions support the common sense and ordinary human experience understanding of residents of British Columbia, that bears are a real danger – especially in more rural areas such as the location of the rental unit.

I find that the Tenant knows or should have known that his actions in failing to move the freezer inside have caused danger to himself and his property, as well as all the other residents of the park. Based on the Landlords' assertions in the hearing, as well as the evidence they submitted to support their assertions, I find it unlikely that their assistant, [S.G.], would provide the opposite information to the Tenant.

Further, I find that the Tenant's assertion that some bear attractants are more dangerous than others is not supported by the evidence before me; rather, I find that a bear attractant is a bear attractant, and that the Landlord's documentary evidence supports this without question. The Tenant did not provide any evidence to support his contention that a locked freezer cannot be opened by a bear. Even if it was impenetrable to the bear, there is no evidence before me that it would not attract the bears in the first place, which is what the Landlords are trying to avoid. The Tenant claimed that "many people" store freezers outside; however, he did not give any examples of people in his area, let alone elsewhere who store their freezers outside with no attention from bears or other wildlife.

Based on all the evidence before me, overall, I accept the Landlords' assertions and evidence that by storing his freezer on the rental unit deck, the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, contrary to section 49 (2) (a) (ii) of the Act.

In order to establish grounds to end the tenancy early under section 49 of the Act, a landlord must not only establish that they have cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord and other occupants to wait for a notice to end the tenancy under section 40 of the Act to take effect. Having reviewed the testimony and evidentiary submissions of the Landlords, I find that they have met that burden.

I am also satisfied that it would be unreasonable and unfair to the Landlords to wait for the One Month Notice to End Tenancy to take effect. I find that without an immediate eviction, the increase in the number of bears coming out of hibernation at this time of year raises the risk to the Tenant, his neighbours and the Landlord's property. The Landlords are, therefore, successful in their Application to end this tenancy early, pursuant to section 49 of the Act, as well as their request to recover the \$100.00 Application filing fee, pursuant to section 60 of the Act.

I grant the Landlords an **Order of Possession** of the rental unit, pursuant to section 49 of the Act. This Order will be **effective two days after it is served** to the Tenant, pursuant to section 83 of the Act.

The Landlords are also awarded recovery of their \$100.00 Application filing fee from the Tenant, pursuant to section 60 of the Act. The Landlords are authorized to retain **\$100.00** of the Tenant's \$425.00 security deposit in complete satisfaction of this award.

Conclusion

The Landlords' Application is successful, as they provided sufficient evidence to support their burden of proof on a balance of probabilities. The Landlords are also awarded recovery of their \$100.00 Application filing fee from the Tenant, and they are authorized to retain \$100.00 from the Tenant's \$425.00 security deposit in complete satisfaction of this award.

Pursuant to section 49 of the Act, the Landlords are granted an **Order of Possession effective two days** after service on the Tenant. This Order must be served on the

Tenant by the Landlords and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I authorize the Landlord to retain **\$100.00** from the Tenant's security deposit, in complete satisfaction of the monetary award reimbursing the Application filing fee.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9 (1) of the *Residential Tenancy Act*.

Dated: May 04, 2022

Residential Tenancy Branch