



Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding White Spruce Mobile Home Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **ET, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for an early end of a tenancy and an order of possession pursuant to section 49(1) of the *Act*;
- Reimbursement of the filing fee pursuant to section 65.

The tenant attended. The agents JK and AH attended on behalf of the Manufactured Home Park, the full name of the park appearing on the first page ("the park").

All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

The landlord called the witness HL who provided affirmed testimony.

Preliminary Issue – Settlement

I explained to the parties that under the *Act*, the Arbitrator may assist the parties to settle their dispute. If the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I explained to the parties that I do not provide legal or any advice. They could call the RTB Information Officers or consult the website for help and information. They could settle the issues outside or during the hearing.

The parties spent considerable time discussing possible settlement. They did not reach settlement.

Accordingly, the hearing continued, and the landlord requested an Order of Possession as soon as possible.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

The landlord and tenant submitted considerable oral testimony and supporting documentary evidence. Not all this evidence is reproduced or discussed here. The landlord submitted an extensive evidentiary package and affirmed all evidence in testimony.

The landlord testified the park is a manufactured home park. The tenant rents a site from the landlord. The tenancy started on June 4, 2006, for monthly rental of \$276.00. No written tenancy agreement signed by the parties was submitted.

The landlord submitted an unsigned copy of the tenancy form used by the park and explained the parties did not sign an agreement when the tenant occupied the site 16 years ago.

The tenancy form states that the tenant is responsible for the behaviour or actions of any occupants or guests:

14. CONDUCT

The tenant is legally responsible for the behaviour or actions of any other occupants of the site or guests of the tenant. In order to promote the safety, welfare, enjoyment, and comfort of other residents of the Park and the landlord, the tenant or the tenant's guests must not disturb, harass, or annoy another resident of the Park, the landlord, or occupants of a

neighbouring property. Any noise or behaviour, which in the reasonable opinion of the landlord, may disturb the comfort of any resident of the Park or other person, must not be made by the tenant or the tenant's guests, nor must any noise be repeated or continued after a request to discontinue such noise or behaviour has been made by the landlord. The tenant or the tenant's guests must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the Park.

The landlord submitted an unsigned copy of Park Rules and testified they are applicable to all tenants. The Rules state in part:

2. GUESTS

The Tenant assumes full responsibility for his/her guests' conduct and behaviour and will be held liable for any and all damages caused by him/herself, any guests of other persons permitted by the Tenant to enter the Park.

...

7. GENERAL CONDUCT

(a) The rights and privacy of all park residents must be respected by other tenants at all times. The Landlord shall have the right to terminate the Tenancy Agreement for repeated violations.

(b) The Park maintains quiet hours from 11 pm to 9 am. All noise, in particular from entertainment equipment or machinery, must be curtailed during these hours so as not to disturb neighbours.

(c) Loud and annoying parties or other gatherings are not allowed at any time, and tenants are responsible for the conduct of their guests at all times.

(d) Abusive or offensive language is prohibited in the Park.

(e) ...

(f) ...

...

9. VIOLATIONS OF PARK RULES, COMPLAINTS, SUGGESTIONS, ETC.

The Landlord encourages the direct communication of violations of any of the Park Rules between the tenants themselves. [...] Complaints should be made in writing to the Landlord. [...]

Any breach of these Park Rules by the Tenant will be considered a breach of a material term of the Tenancy Agreement and may result in a Notice to End Tenancy or other penalty as provided by the Manufactured Home Park Tenancy Act and regulations.

Reference in this Decision is made to the two sons of the tenant, JL and AL, who the tenant testified are now in their 30's. They returned to his home 8 and 3 months ago respectively.

The landlord testified to good relations with the tenant during the tenancy. However, the landlord testified that there were historical problems with the sons' behaviour before they left the tenant's home when they became adults.

Since the return of the sons to the tenant's home, there have been numerous complaints about the sons' disruptive behaviour which the landlord said has significantly interfered with and unreasonably disturbed other residents, particularly the tenant's neighbour, the witness HL. As a result, since the two sons have occupied the unit, the landlord cautioned the tenant verbally many times, issued a written warning and then served a One Month Notice.

This Notice was disputed by the tenant on May 25, 2022, and the Application is scheduled for hearing October 7, 2022.

The landlord submitted as follows in their application:

Guests of the Tenant [name] have continued and escalated the behavior that led to the initial eviction notice [referenced earlier]. The guests have been recorded; firing a compound bow past neighboring houses, playing with a bull whip in common space, frequently yelling crude, expletive and

racist language and, get into violent altercations with each other which spill into common areas. Recently (June 20th) an unknown individual smashed one of the guests car windows in the middle of the day.

The landlord's evidence includes written statements and videos. The videos were listed in the required form, a copy of which was submitted, titled Digital Evidence Details – Form 43. This Form listed the videos provided to the tenant and submitted in support of the landlord's application. The list is not reproduced here in its entirety and includes the following to which the landlord referred:

Video #	Column "What it shows"
2	[JL] occupant firing arrows past multiple houses along shared roadway, swearing, and saying "I wouldn't want to be on my bad side" as he passes in front of [witness HL} place (June 30, 2022)
3	One of the [occupants] singing loudly "I'm a little nigger, short and sweet" as he leaves his vehicle (June 30, 2022)
5	One of the [occupants] – "Look you nigger living Jew, what time is it" as he walks to his vehicle (June 30, 2022)
8	Very loud music, banging and ship cracking iin public roadway (June 2, 2022)
11	profanity laden yelling as neighbours daughter arrives home (June 30, 2022)

The landlord testified to the accuracy of the above videos which show the actions of the tenant's sons which form part of the complaint by the landlord.

The witness HL was called and provided affirmed testimony as follows. HL is the immediate neighbour of the tenant. She installed a security camera which video records an area including both driveways, the front yards of both units, and the

the park road. She testified to the accuracy of the videos which are listed in detail in the landlord's evidence.

The landlord submitted a written statement by HL which she verified in detailed testimony. HL testified as follows. She lives next door to the tenant with her two high school aged children. The two adult sons of the tenant, namely JL and AL, are the main problem since they moved back in with the tenant. They are loud, disruptive and frightening. They drink in front of the tenant's unit, swear loudly, and listen to disturbingly loud music. Neither of the tenant's sons has a driver's license, yet they drive vehicles on the adjacent park road.

HL testified that JL and AL have stalked her when she was on a date and caused fear for her safety. JL and AL have threatened to harm her. Because of these and other incidents, she has filed a complaint with the police. As well, one of the sons has dealt drugs out of his bedroom window.

The witness HL further testified that one of the sons "practices" with a whip used on animals. This takes place on the public road in the park in front of HL's and the tenant's units. The whip emits a loud, startling noise like a gun shot. The whipping can go on for long periods several times a day and into the night and can be clearly heard in her unit. On her way to work one morning at 5:30 AM, she observed one of the sons using the whip.

The witness HL further testified that one or both of the sons target practice on the road in front of their units with a compound bow. She believed the arrow could seriously injure a person. The arrows travel across the public road and over the front yards of other units.

The witness HL said she put her unit up for sale because of the actions of the tenant's sons but cannot afford to move. She withdrew the listing but wants to move away. She acknowledged being friendly with one of the sons for a short while but testified the relationship ended when she realized what type of person he was. Because of JL and AL's behaviour causing stress and fear in her family, her children have told her, "We can't call this a home".

An occupant of the park named BS submitted a written signed statement dated July 8, 2022 which stated in part:

I am writing this statement to share situations I have witnessed where I believe our neighbours in [address, names of JL and AL] - are acting recklessly and potentially endangering other tenants of the White Spruce Mobile Home park. As the mother of a young child, I find myself feeling increasingly uncomfortable and uneasy about their unsafe actions.

On the afternoon of June 30, 2022, I observed [JL] shooting his compound bow down the middle of the street towards the hill at the end of the road. With the location he was shooting his bow from, the arrows were passing in front of other people's yards and homes.

On July 2, 2022 at 1:50 pm, I observed [JL] snapping a bullwhip in the middle of the road between our home and the home of another neighbour.

On the evening of July 4, 2022 at approximately 10:30 pm, along with my husband, sisters and mother, I could hear the neighbours yelling. I cannot be completely certain where the yelling was coming from. What we were able to make out was "get the fuck off my property I'm tired of your shit". There was more yelling and profanity and occasionally you could hear the names "[JL and AL]".

As a new family, we want to feel safe in our home, which is part of why we bought in a regulated community. We hope this issue can be resolved promptly and without issue.

The tenant testified as follows. He acknowledged that his sons JL and AL live with him, though one of them may have just moved out. One of his sons was dealing drugs but the tenant said, "he [the tenant] put a stop to it". He denied every other allegation of the landlord and rejected any suggestion of wrongdoing by his sons. He said the witness HL had made everything up and only complained when she and one of his sons "broke up".

The tenant testified as follows. He acknowledged his sons use a whip and compound bow on the street in front of the unit. However, it only happens when there is no one around. Therefore, the activities are not dangerous. The landlord is complaining about nothing serious.

Regarding allegations of drinking, swearing, and partying by his sons in front of his home, the tenant testified as follows. He said that “the whole neighbourhood comes and parties there”. The tenant denied his sons are worse than anyone else. He should not be evicted for doing what everyone else does. The landlord said his sons have no where else to go and he will not ask them to move out or stay away.

The tenant submitted a list of character references. He also submitted a lengthy “rebuttal letter”. The letter included the statements that he is 67, retired, and does not drink. He asserted that people in the park have shot at targets over the years. He said the landlord’s witness HL is not telling the truth and is disliked by others. He listed various complaints against HL such as the allegation her cat damaged the insulation in his unit.

The landlord denied that target practising is normal in the park. They denied that they tolerate drinking and partying.

The landlord requested an Order of Possession and reimbursement of the filing fee.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the parties’ submissions and documents are reproduced here. The relevant and important aspects of the landlord’s claims and my findings are set out below.

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 on the landlord to establish on a balance of probabilities that they are entitled to an order for an early end of the tenancy.

There are some circumstances when it is necessary to end a tenancy as soon as possible – when waiting for a regular notice to take effect would be unreasonable or unfair. Applying for dispute resolution to end the tenancy early is allowed in these situations.

A landlord can apply for an order to end a tenancy without issuing a One Month Notice to End Tenancy for Cause if a tenant, (including their pets or guests) have done one of the following:

- Significantly interfered with or unreasonably disturbed another resident or the landlord
- Seriously endangered the safety, rights or interests of the landlord or another resident
- Engaged in illegal activity that has caused or could cause damage to the property, disturbed or threatened the security, safety or physical well-being of another resident, or endangered a lawful right or interest of another resident or the landlord
- Caused major damage to the property or put the landlord's property at considerable risk

To end a tenancy early, the landlord must prove that the tenant has done something contrary to the Act **and** that it would be unreasonable or unfair to the landlord or other occupants to wait for a notice to end tenancy for cause ("One Month Notice").

The relevant section of the Act is section 49:[emphasis added]:

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.

The landlord relied primarily on section 49(2)(a)(i), that is:

the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property

Policy Guideline 51 – Expedited Hearing provides guidance on the issuance of Orders of Possessions in these circumstances. The Guideline states in part:

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 gave candid, forthright, credible evidence supported in all material aspects by documentary, video and witness evidence. The landlord was believable in describing the actions of the tenant's sons, the disruption to the neighbourhood and the fear generated by their actions. I find the landlord's conclusion reasonable that the tenant's sons' actions create a risk of injury to occupants of the park. I find the landlord's fear of safety of other park occupants to be reasonable given the tenant's sons use a whip and compound bow on the park's roadway used by other park occupants.

I find the witness HL gave calm, believable testimony which I accept in all respects, and which was supported by the landlord's evidence including the written statement of BS. I find the landlord's submitted videos to be graphic description of the events recited. For these reasons, I have given significant weight to the evidence of the landlord.

During the hearing, the tenant denied he has an obligation to control the behaviour of his guests or occupants. The tenant said he did not have a duty to make best efforts to stop the offending behaviour. If the guests or occupants nevertheless continue the offending actions, the tenant asserted he has no obligation to effectively remove them from the premises.

I find the tenant's general denial of responsibility to be reckless and in disregard of his legal obligations. He acknowledged he had taken no action to get his sons to leave or stop their behaviour and had no intention of doing so. His assertion that he can do nothing about the activities of JL and AL or get them to leave lacks any commitment to protect neighbours from his sons' actions.. This lack of accountability and responsibility is unjustifiable and understandably a source of concern for the landlord. The tenant's approach is lacking in good judgement and common sense.

Because of my findings, I give little if any weight to the tenant's testimony and assertion of absence of any wrongdoing. I prefer the landlord's well supported evidence in all aspects..

Considering the testimony and evidence, I find the landlord has met the burden of proof in this matter. I find the cumulative effect of the prolonged behaviour of the tenant's sons as described by the landlord in their evidence to establish the tenant is responsible significant interference with and unreasonable disturbance of occupants, including HL and BS, as well as the landlord.

I find that the landlord provided enough evidence that it would be unreasonable to wait for a hearing for a One Month Notice, as the testimony and evidence presented by the landlord demonstrated a significant risk of injury to occupants of the park along with a refusal by the tenant to take any steps to stop the behavior.

In summary, on a balance of probabilities and for the reasons stated above, I find that the landlord's application meets the burden of proof and satisfies all requirements under section 49 of the *Act*.

Accordingly, I allow the landlord's application for an early end to this tenancy and an Order of Possession will be issued.

I caution the landlord to take all reasonable care to protect their safety. I advise the landlord to seek the protection and services of the police and to consult RTB about safety measures going forward.

The landlord is granted reimbursement of the filing fee of \$100.00 for which I issue a Monetary Order.

Conclusion

I grant an **Order of Possession** pursuant to section 49 (Early End of Tenancy) to the landlord effective **on two days' notice**. This Order must be served 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: August 9, 2022

Residential Tenancy Branch