



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The Tenants seek an order pursuant to s. 40 of the *Manufactured Home Park Tenancy Act* (the “Act”) cancelling a One-Month Notice to End Tenancy signed on March 28, 2022 (the “One-Month Notice”).

E.H.D. and E.F.D. appeared as the Tenants. M.B. appeared as agent for the Landlord. J.B. appeared as caretaker for the manufactured home park. I was advised that the caretaker and agent are spouses.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advised that the One-Month Notice was personally delivered to the Tenants on March 28, 2022. The Tenants acknowledge receiving the One-Month Notice on March 28, 2022. I find that the One-Month Notice was served in accordance with s. 88 of the *Act* and received on March 28, 2022.

The Tenants advise that the Landlord’s agent was served with the Notice of Dispute Resolution, which was acknowledged by the agent. I find that pursuant to s. 71(2) of the *Act* that the Landlord was sufficiently served with the Notice of Dispute Resolution based on its acknowledged receipt by the Landlord’s agent.

The Landlord’s agent advised that the Landlord’s response evidence was personally served on the Tenants on July 20, 2022. The Tenants acknowledge receiving the

Landlord's evidence. I find that the Landlord's evidence was served in accordance with s. 89 of the *Act*.

Preliminary Issue – Tenants' Evidence

The Tenants provided 400 pages of evidence to the Residential Tenancy Branch on July 26, 2022. At the hearing, the Tenants acknowledge that the Landlord was not served with the evidence. The Landlord's agent confirmed not having received the evidence.

Rule 3.5 of the Rules of Procedure requires applicants to be prepared to demonstrate service of their application materials at the hearing. Rule 3.14 of the Rules of Procedure requires an applicant's evidence to be received by each named respondent and given to the Residential Tenancy Branch at least 14 days prior to the hearing.

Not only was the evidence not served, but the Tenants also failed to provide the evidence to the Residential Tenancy Branch 14 days prior to the hearing. No submissions were made with respect to whether the evidence qualified as late evidence under Rule 3.17. Rather, the Tenants advised that they were responding to the Landlord's response evidence. The Rules of Procedure do not contemplate an applicant being given the opportunity to respond via documentary evidence to the respondent's documentary evidence.

As the Tenants evidence was not served, I find that it would be procedurally unfair to the respondent Landlord to consider the evidence. Accordingly, the Tenants evidence is excluded as it was not served and shall not be considered by me in these reasons.

Issues to be Decided

- 1) Should the One-Month Notice be cancelled?
- 2) If not, is the Landlord entitled to an order of possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

A copy of the tenancy agreement was put into evidence, confirming that the Tenant E.D. began renting at the site in April 2018. At the hearing, I was advised that the manufactured home was owned by one of the named applicants and the other named applicant occupied the manufactured home. The applicants are father and son to each other. I will refer to the occupant son as the Tenant.

The parties confirmed that rent, as of June 1, 2022, was due in the amount of \$610.00 on the first day of each month. The Landlord's agent advised that when the current tenancy agreement was signed in April 2018, it included a copy of the park rules, which was also put into evidence by the Landlord.

The One-Month Notice, which was put into evidence by the Landlord, lists various grounds for ending the tenancy, which include:

- The tenant or person permitted on the property by the tenant have:
 - significantly interfered or unreasonably disturbed another occupant; and
 - seriously jeopardized the health, safety, or lawful right of another occupant.
- The tenant or person permitted on the property by the tenant have engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant.

The Landlord's agent alleges that the Tenant is involved in trafficking illicit substances out of the manufactured home. The Landlord's agent testified to vehicles coming and going to the manufactured home approximately four times per day. The Tenant acknowledges that he consumes cannabis and that he has it delivered to his property from legal sources. He denies involvement in trafficking illicit substances and emphasized that his cannabis deliveries are both legal and do not occur with the frequency alleged by the Landlord's agent.

I was advised that other tenants at the manufactured home park have complained of the Tenant. The Landlord's evidence includes statements from various individuals who identify themselves as residents of the manufactured home park, including B.W., R.W., M.K., B.B., and C.L..

B.W. and R.W., who indicate they live (or in the case of B.W., used to live) at an adjacent manufactured home site, allege that the Tenant came to their property in August 2021 warning them that he had upset a drug dealer and was not sure whether the drug dealer would seek some form of retaliation at his manufactured home. B.W.'s

statement indicates that she lived at the neighbouring manufactured home with her children and that they hid in the back of the trailer out of fear of gunshots or other violence.

Both B.W.'s and R.W.'s statements include allegations that they have witnessed drug deals at the subject manufactured home. M.K.'s statement includes a similar allegation.

M.K.'s statement includes the following narrative about an alleged incident that is said to have taken place on April 15, 2022:

On April 15th, 2022, I Glanced out the window over at the trailer [redacted] across the way and [the Tenant] that lives there was in his front yard on his hands and knees rocking back and forth, smashing his head off the pavement. I went outside and I called one of the neighbors over to try and to help him up but he refused the help so he just left him and I went inside. I looked over again he was standing up then he fell over smashed his head on the pavement and then did not move. I ran out to see if he was okay, he still did not move. I called more neighbors over and nobody could get him to wake up. They had to run to his dad's place as one of the neighbors were on the phone with 911, his dad came grabbed him off the ground shook him and he finally woke up and said it was just his back medication that makes him really sleepy. It is not the first time I've witnessed him having to be picked up off the ground by others; again claiming it was his back medication.

M.K.'s statement continues by indicating that she does not let her son play outside in their front lawn due to fear that he might witness something and that they keep their curtains closed due to the Tenant's messy yard and concern of witnessing something.

The Tenant denies the allegations raised by B.W. and R.W., saying he had never even spoken with B.W.. I was told by the Tenant that R.W. is a relatively new tenant at the manufactured home park and that there was some form of dispute between them. The Tenant provided no response with respect to the allegations contained in the statement from M.K..

The Landlord's agent testified to a raid conducted by the police at the subject manufactured home site and an adjacent site at the park. The witness statements of R.W. and M.K. make reference to the police attendance at the subject manufactured home site.

The Landlord's evidence includes email correspondence between the Landlord's agent and a police officer. The Landlord's agent asked for information on the search of the Tenants' manufactured home on March 11, 2022 and received the following response from the police officer on April 29, 2022:

We have yet to have charges approved in court but here is a brief summary.

We were investigation sophisticated drug trafficking organization I (sic) the city of Surrey. Surveillance determined that there were individuals attending Units 10 & 12 who were higher ranking members of the group. We were uncertain the roll that the units played in our investigation and drafted warrants to search them. Upon execution of the warrants there was no evidence gained within that furthered the investigation. Again, we are awaiting charge approval so the information that I can release is limited.

That being said, I entered both units and both should be condemned. The amount of items that were located inside [the Tenant] unit would constitute a hoarding issue and the amount of filth and black mold makes it uninhabitable.

The Tenant acknowledges that the police attended the manufactured home but emphasized that nothing was found during their search. It was argued that the Landlord's agent or the caretaker called the police with a complaint that initiated the search.

The Landlord put into evidence a copy of a court search for the Tenant, showing he had been charged with three crimes on August 18, 2021, including impaired operation of a conveyance, dangerous operation of a conveyance, and flight from police. The Landlord does not allege these crimes took place at the manufactured home park. The information provided by the Landlord indicates that the charges have yet to be determined in court and the process is ongoing.

The Tenant acknowledges a criminal history but emphasized that that was in the past.

The Landlord's agent further advised that the manufactured home park has a speed limit and that she tells drivers to slow down when it appears they are speeding. The park rules indicate that speed limit is 10 km/h. The Landlord's agent says that she told one driver to slow down on April 13, 2021 and that the driver went to the Tenant's

manufactured home. Shortly thereafter, the Landlord's agent says that she received a series of threatening text messages from an unknown number. Copies of those text messages were put into evidence by the Landlord. The Landlord's agent says she was speaking with the Tenant and say a number call, which she recognized to be number who sent the threatening text messages.

The Tenant denies the allegation that the speeding vehicle came to his manufactured home and denies being home at the time. He denies knowing who the individual was and emphasized that it was impossible to see the phone number on his phone as alleged by the agent.

The Tenant argued that he worked with the caretaker some time ago assisting in the maintenance at the manufactured home park. He says he used to be friendly with the caretaker and the Landlord's agent. The Tenant says that he had a dispute with the caretaker respecting pay and that he had suffered an injury that prevented him from doing physical work. It was alleged by the Tenant that the caretaker and the agent threatened to evict him if he did not return and work.

The Landlord's agent advised that two individuals are living with the respondent son in the manufactured home, L.A. and V.C.. The Landlord's agent intimated that these two individuals are involved with the Tenant's alleged criminal activities. The Tenant denies that L.A. or V.C. live with him. The Tenant alleges that the agent and caretaker are racist and have used racial epithets against L.A..

The Landlord's agent alleges that L.A. stole flower baskets from another tenant at the manufactured home park. The Landlord's written submissions indicate that this is alleged to have occurred on June 7, 2021.

The Landlord's agent finally advised of two incidents in which individuals visited the Tenant's manufactured home and paramedics attended the manufactured home afterwards. The Landlord's written submissions indicate that on November 6, 2021 paramedics attended after an individual, J., was not responsive. The written submissions allege that the Tenant advised the agent J. had sat down, said he wasn't feeling well, and collapsed on the floor. It goes on to state that the Tenant called paramedics after several hours when J. did not wake up.

The Landlord's agent testified to another occurrence in which the paramedics attended the manufactured home and passed away afterwards. The written submissions indicate

that this second incident with the paramedics occurred on January 18, 2022. The Landlord's agent testified to her understanding based on what the Tenant had told her was that the individual, E.S., went to the Tenant's manufactured home at approximately 1:30 am. The Landlord's agent further testified that the Tenant is said to have told her that the individual was not feeling well, fell, and did not get up. The Landlord's agent emphasized that the paramedics were not called until much later and attended at 2:30 pm that same day. The written submissions indicate that paramedics were called once E.S.'s son attended the manufactured home to find his father.

The Tenant provided no response to the incidents in which paramedics attended the manufactured home.

Analysis

The Tenants seek an order cancelling the One-Month Notice.

Under s. 40 of the *Act*, a landlord may end a tenancy for cause and serve a one-month notice to end tenancy on the tenant. A tenant may dispute a one-month notice by filing an application with the Residential Tenancy Branch within 10 days after receiving the notice. If a tenant disputes the notice, the burden for showing that the one-month notice was issued in compliance with the *Act* rests with the landlord. Presently, the One-Month Notice was issued on the basis of ss. 40(1)(c)(i) (significant interference or unreasonable disturbance), 40(1)(c)(ii) (seriously jeopardizing health and safety), and 40(1)(d)(ii) (illegal activity that has or likely to adversely affect quiet enjoyment, safety, security, and physical well-being).

I note that the Tenant is not the owner of the manufactured home, though he signed the tenancy agreement for the manufactured home site. Typically, the owner of the manufactured home would be the tenant for the manufactured home site. However, that need not always be the case. Whether the son or father are the tenant or whether they are co-tenants is not relevant to this matter. The relevant sections cover of the *Act* cover conduct by tenants and persons permitted on the property by the tenant. The alleged conduct of the son, whether as a tenant or occupant, falls within the ambit of the relevant sections as the father clearly permits the son to occupy the manufactured home.

Policy Guideline #6 provides guidance with respect to the entitlement of quiet enjoyment. Though guidance is worded as the protection of a tenant's right to the quiet enjoyment of the property from the landlord, I find that it provides assistance in considering what constitutes an unreasonable disturbance. It states the following:

A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment

I note that claims before the Residential Tenancy Branch are determined on a balance of probabilities rather than the criminal standard of beyond any reasonable doubt.

The Landlord essentially argues that the Tenant and/or his associates, L.A. and V.C., are involved in trafficking illicit substances. The Landlord's agent testified to witnessing vehicles coming and going from the property approximately four times a day. The Landlord's agent advised of two instances in which individuals were taken from the manufactured home under unusual circumstances and that one of the individuals later died in hospital. The written submissions allege that one was in relation to a drug overdose.

Looking at the police raid on March 11, 2022, I do not accept the Tenant's argument that the Landlord's agent or the caretaker initiated the police search. The email provided by the Landlord is from an officer and clearly indicates that the search was initiated following surveillance of the manufactured home. A search warrant was granted to enter two manufactured homes. The Landlord's written submissions indicate 9 police vehicles attended and the written statements from M.K. and R.W. both describe a significant armed police presence. It is more likely than not that the search was conducted as stated in the police officer's email, after the Tenant was subjected to police surveillance.

The evidence is clear that nothing was found during the search that warranted further investigation. However, the police email makes clear that the information that could be

shared is limited due to their awaiting charge approval. Regardless of whether any charges do come, I find that the police attendance was not by chance and that the Tenant's conduct caused the disturbance on March 11, 2022.

The Landlord's evidence indicates that one individual died after visiting the manufactured home on January 18, 2022 and that another was taken away by paramedics on November 6, 2021. The Tenant provided no response to the allegations in his oral submissions, despite being served with the documentary evidence and listening to the agent's oral submissions. I accept that paramedics attended on November 6, 2021 and January 18, 2022. One instance may simply be a tragic accident. However, two instances involving exceedingly similar sets of circumstances leads me to conclude that it is more likely than not that the two individuals in question overdosed on illicit substances while visiting the Tenant's manufactured home.

Further, the Landlord's evidence suggests that vehicles have been witnessed coming and going from the manufactured home throughout the day. The Tenant denies the frequency and says he is getting cannabis delivered to his home. However, the Landlord has witness statements from R.W., B.W., and M.K., all of whom indicate they have witnessed what they describe as drug deals. Indeed, the statements of R.W. and B.W. both outline an instance in August 2021 when the Tenant warned them that a drug dealer may seek retribution from the Tenant at his home. B.W. and M.K. both indicate they have children and that they are fearful for their children's safety in light of the activity taking place at Tenant's manufactured home. On balance, I accept the Landlord's allegation that the Tenant has drug dealers attend the manufactured home and that these constitute an ongoing disturbance at the park.

Looking at the Tenant's alleged consumption of cannabis, I accept that he likely does consume cannabis, which is legal. However, M.K.'s statement describes exceedingly erratic behaviour on April 15, 2022. The Tenant provided no response at the hearing respecting this behaviour. Perhaps it is possible that Tenant's back medication caused this behaviour. However, this incident when viewed within the wider context of incidents described by the Landlord lead me to conclude that it is not likely that Tenant's back medication. Two individuals, one of whom died, were taken away the manufactured home after passing out. Drug dealers have been witnessed coming and going from the manufactured home. The police have placed the Tenant under surveillance on suspicion of trafficking drugs. When viewed in this wider context, it is more likely than not that the Tenant is consuming illicit substances and that is what has caused this

behaviour. I find that the Tenant's behaviour, specifically on April 15, 2022, constituted a disturbance within the park.

When viewed individually, the incidents described by the Landlord would likely not be sufficient to justify an end to the tenancy. However, the collective impact of the various incidents make it clear that the Tenant's conduct constitutes an unreasonable disturbance to the other occupants of the manufactured home park. I find that the frequent daily visits from vehicles, the police attendance, and two attendances by paramedics due to probably overdoses constitute a frequent and ongoing conduct by the Tenant that unreasonably disturbs the other occupants of the manufactured home park.

I further find that the nature of the disturbances seriously jeopardize the health, safety and lawful right of the other occupants at the manufactured home park. I make this finding relying upon the incident described in August 2021 in which the other park tenants describe hiding in the back of the trailer.

I find that the One-Month Notice was properly issued under ss. 40(1)(c)(i) and 40(1)(c)(ii). I make no findings with respect to illegal activity as it is not necessary based on my findings above.

I have reviewed the One-Month Notice and find that it complies with the formal requirements of s. 45 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

As the notice was properly issued and meets the formal requirements, I dismiss the Tenants application to cancel the One-Month Notice.

Section 48(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 45, then I must grant the landlord an order for possession. Accordingly, I find that the Landlord is entitled to an order of possession under s. 48(1) of the *Act*.

Conclusion

The Tenants' application to cancel the One-Month Notice is dismissed.

The Landlord is entitled to an order of possession under s. 48(1) of the *Act*. I order that the Tenants provide vacant possession of the manufactured home site within **two (2) days** of receiving the order.

It is the Landlord's obligation to serve the order of possession on the Tenants. If the Tenants do not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court.

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 8, 2022

Residential Tenancy Branch