



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Manufactured Home Park Tenancy Act* ("Act"), to cancel a One Month Notice to End Tenancy for Cause dated May 9, 2022; and to recover the \$100.00 cost of his Application filing fee.

The Tenant, his wife, the Landlord, and his wife 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 Landlord 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they 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 Parties 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

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to Recovery of his \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began on in September 2017, with a current monthly pad rent of \$324.00, due on the first day of each month. The Tenant said they are moving, but they wanted to proceed with the hearing, because they feel wrongly accused, and they want a third party to sort things out. The Tenants are renting a pad in a mobile home park ("Park"), from the Landlord.

The Landlord submitted a copy of the One Month Notice, which was signed and dated May 9, 2022, and which has the rental unit address. The One Month Notice was served in person on May 9, 2022, with an effective vacancy date of June 30, 2022. It was served on the grounds that the Tenants 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; and put the Landlord's property at significant risk.

The Landlord indicated having different issues with the Tenants that led to him serve the One Month Notice. In the hearing, the Landlord indicated that there were issues with (i) the Tenant(s) being aggressive and threatening with other occupants of the Park; and (ii) the odour and water usage that accompanies the Tenant growing approximately 70 cannabis plants under his trailer.

Complaints from Neighbours

The Landlord said he received a number of complaints from occupants of the Park about the Tenant. The Landlord asked them to put their complaints in writing, and he submitted these letters of complaint about the Tenant(s) into evidence. One such letter dated May 14, 2022, is from a neighbour, M.U. M.U. said the Landlord had asked him to observe while the Landlord served the Tenant with the One Month Notice. In this letter, M.U. said:

. . .

Near the end of their interaction, [the Tenant] became aggressive, and threatening while waving his arms about. In a raised voice he was swearing and

said 'You weasel faced mother ****er, get the f*** off my property! You don't know who you are dealing with!' I was shocked and worried enough for everyone's safety that I was going to call the RCMP.

In the past I have had the misfortune to have had disagreements with [the Tenant]. Once he raised a rake in the air ready to strike me and the next day he continued the aggression with a raised voice telling me he wanted to hit me. On the two occasions [the Tenant] was acting threatening toward me, there were witnesses to the events.

. . .

In another letter dated May 22, 2022, from G.R., a neighbour of the Tenant, G.R. states:

I am writing this letter to inform you that I am a witness to an incident that occurred July 2020, at the [Park].

I have been living at [unit #] for the last five years.

One evening as I was having supper on my patio, I noticed two of my neighbours yelling and screaming at each other over watering the garden. [The Tenant] was using profane language and threatening [M.U.] with a rake and [M.U.] in defense picked up a stick. At this point I worried at things were going to escalate so I yelled at them to 'Stop and go home!' and things settled down.

I was surprised and disappointed at the aggression of [the Tenant]. I have tried to be neighbourly.

. . .

In a letter dated May 16, 2022, another tenant, H.B., wrote to say that he has purchased cannabis from the Tenant at the Park. This tenant wrote:

He brags about the grow operation under his trailer, the yield he gets and the quality of his product. He explained that the strain he grows has huge blossoms. He offered me a pound for \$1200. I bought a smaller amount but then found he had ripped me off for quantity. I stopped dealing with him.

Last week, a year and a half later, he knocked on my door with \$125.00 and an apology saying he was sorry for anything he had done and wanted to be buddies. He asked 'What do you have against me?', I believe this is hush money.

. . .

I am a long time resident at the park and worry about his temper and intimidating behaviour. I am concerned for the safety and wellbeing of all the tenants. This was a quiet, respectful place before he moved here.

The Tenant's wife said:

I don't understand any of this; I can see that this is just four adults that decided not to get along together. They don't like it if we mow or improve our house. Everything got out of perspective. Every year, [D.D.] was across from our window giving me the finger. We bought a board that says 'Jesus Loves You'. She stopped flipping me off when we bought security cameras. I didn't understand all this hate. This is a horrible situation that has grown and grown.

Issues with Growing Cannabis

The Landlord directed my attention to a letter dated May 2, 2022, that he received from [D.D. and M.U.], who are the Tenants' neighbours in the Park. They said:

Please accept this letter of complaint against our neighbour, [the Tenant]. For the last year he has been growing marijuana under his trailer. He has a large hydroponic grow operation. It has become unbearable for us.

[M.U.] is in poor health, he has a chronic condition that leaves him homebound and in bed most days. The increased traffic; loud engines, souped-up trucks revving motors and, nefarious characters, constant noise; construction, saws and drills, cement mixers running for hours (he uses to clean rocks for his hydroponics system) and the most difficult issue the smell have all made our life miserable. The smell is constant and extreme when he harvests his plants and opens the doors. It can be so overwhelming that we are not able to enjoy our property. It causes my husband's health and symptoms to worsen, he has extreme nausea. We cannot open our windows and he can no longer rest in his room during the day because of the constant activity.

We have concerns as well about fire liability as he uses grow lights and has such a big set-up as well how he handles the waste from his business. Leaves and stalks are thrown around the garden, in the park spaces and filling the bin.

In the hearing, the Tenant said:

[The Landlords] were complaining about the smell around the Park. I bought a \$275.00 carbon filter. My little gardening room is a vapour barrier, so no smell escapes. I've asked other tenants to walk with me and they can't smell it. It's only a little 10 x 10 room and he thinks I have a big grow op.

The Landlord replied:

I don't think that the [Tenants] are telling you the truth. He's definitely lying about the smell. We don't go to the Park that often - a few times a month. We could smell it this summer. We were working there for a full day, and it was atrocious. Sometimes it doesn't smell if he has all of his doors closed and if the wind is blowing the other direction. It's a hydroponic grow-op. When he's cleaning this equipment outside, it smells terrible. It depends on what they're doing and the way the wind is blowing.

I asked the Tenant when he started to do something about the smell. He said:

In February. Maybe the people next door, if something was drying and coming out of the house. I shut that right down. I'm not growing marijuana anymore. If it's going to cause that much problem. And everyone in that park has plants growing. The next door neighbour. the next one has 6 or 7 growing in his yard. Probably 40 – 50 % of the people in that park grow pot. I did nothing illegal.

In an email dated May 24, 2022, T.Z., a Water Services Liaison ("WSL") wrote to the Landlord, saying:

...

You are correct, the gentleman in that unit was quite offensive, inflammatory and flat out rude. Things settled down once his wife got on the phone, albeit only slightly. It sounded like there is major conflict between them and the person that lives across from them, and who reported the incidents.

My recorded notes of that incident are as follows:

Complaint received July 26, 2021 that the resident in mobile home [Tenant's unit #] is violating the current stage 3 restrictions and is watering their lawn with a sprinkler at all times during the day and is also washing down their driveway, walkway and car. The WSL called and spoke to the mobile home park resident about the current restrictions. [The Tenant] was very confrontational and angry.

WSL reviewed Stage 3 restrictions and requested compliance. If there is continued non-compliance a fine will be issued.

Analysis

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

Complaints from Neighbours

Section 22 of the Act sets out a tenant's right to quiet enjoyment of the rental unit, and states that tenants are entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only the landlord's right to enter the rental unit in accordance with section 23, and use of the common areas for reasonable and lawful purposes, free from significant interference."

Policy Guideline #6 ("PG #6") states:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. 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.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Based on the multiple complaints from different neighbours saying the same thing about the Tenants' aggressive behaviour and profane language, I find that the Tenants have instilled a sense of apprehension in the Park's community. I find that other occupants of

the Park express concern about having to interact with the Tenant, given the degree of anger and profanity that comes from interactions with the Tenant.

Based on the evidence before me, I find that the Tenant has breached other Park tenants' rights to quiet enjoyment of their residence, as set out in section 22 of the Act. This breach comes from the Tenant's behaviour in interacting with the Landlords and other occupants of the Park. I find this behaviour has caused significant interference with and unreasonable disturbance to other tenants and the Landlord, which is a ground for eviction pursuant to section 40 of the Act.

I also find that the One Month Notice is consistent with section 45 of the Act, as to form and content. Accordingly, I confirm the validity of the One Month Notice, and I **grant the Landlord an Order of Possession, pursuant to section 48 of the Act.**

Issues with Growing Cannabis

The Landlord has provided sufficient evidence to confirm the validity of the One Month Notice; however, I find that the Tenant's behaviour surrounding the cannabis grow operation demonstrated a further disregard for the quiet enjoyment of other tenants' with the oft reported, and objectionable odour that spread throughout the Park.

While the Tenant said he stopped growing cannabis, I find that this was not the case at the time the One Month Notice was issued. As such, I find that this behaviour contributed to the validity of the One Month Notice and the Landlord's grounds for evicting the Tenant, as it further breached other tenants' right to quiet enjoyment of their space in the Park. Accordingly, and pursuant to sections 28 and 62 of the Act, I find this is another reason to grant the Landlord an order of possession of the pad.

As I have found the One Month Notice to be valid, and the effective date has passed, I find that the Tenant is overholding the rental unit and the Landlord is therefore entitled to an Order of Possession pursuant to section 48 (2) (b) of the Act. As the effective date has passed, the **Order of Possession** will therefore be **effective two days after service on the Tenant.**

I dismiss the Tenant's Application to cancel the One Month Notice, as I find that it is valid and enforceable. The Tenant's Application is cancelled wholly, pursuant to section 55 of the Act.

Conclusion

The Tenant is unsuccessful in his Application, as the Landlord provided sufficient evidence to meet his burden of proof on a balance of probabilities. The Tenant's Application is cancelled wholly.

Pursuant to section 48 of the Act, I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 21, 2022

Residential Tenancy Branch