



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on June 24, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice);
- An extension to the time period set out under the Act for filing the above noted claim; and
- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice).

The hearing was convened by telephone conference call at 9:30 A.M. (Pacific Time) on November 10, 2022, and was attended by the Tenant, the Landlord, and two witnesses for the Landlord J.K. and K.H. All testimony provided was affirmed. Although the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), they stated it was received late. The Tenant stated that they are a person with disabilities which contributed to their late service of the NODRP on the Landlord. In any event, the Landlord stated that they had no concerns with proceeding with the hearing, so the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior

would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

Although the Tenant sought to dispute a 10 Day Notice as well as an extension to the time limit to file the Application disputing the 10 Day Notice, the Tenant acknowledged at the hearing that they had filed that claim in error as they intended to seek more time to dispute the One Month Notice, not a 10 Day Notice. In any event, as the parties agreed that the Tenant was personally served with the One Month Notice on June 15, 2022, and they filed the Application seeking to dispute the One Month Notice on June 24, 2022, I therefore find that an extension to the time limit for filing a dispute of the One Month Notice is unnecessary as the Application was filed in compliance with section 40(4) of the Act.

The Application was amended to remove the Tenant's claim disputing a 10 Day Notice and requesting an extension to the time period for doing so.

Preliminary Matter #2

Although the parties engaged in lengthy settlement discussions pursuant to section 56 of the Act, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision under the authority granted to me by the Director of the Residential Tenancy Branch (the Branch) under section 9.1(1) of the Act.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice, and if not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that the One Month Notice was personally served on the Tenant on June 15, 2022. The One Month Notice in the documentary evidence before me is signed and dated June 15, 2022, has an effective date of July 31, 2022, and states that the reason the One Month Notice has been served is because the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. In the details of cause section of the form the landlord wrote that the Tenant often uses threatening words and language to the neighbors next to them, that they put garbage behind their neighbors backyard on purpose, that the Tenant told the Landlord to "go back to the country you're from" in front of numerous witnesses and they have a zero tolerance policy for racism.

The Landlord submitted a copy of a previous decision between themselves and the Tenant in relation to this tenancy wherein the arbitrator stated that they have little doubt that there has been name calling and rude gestures made between the Tenant and another occupant of the Manufactured Home Park, MB. The Arbitrator also accepted that the Tenant's behaviour in the Manufactured Home Park had been seen as annoying or abrasive and that they themselves experienced such behavior from the Tenant at the hearing. Although the Arbitrator granted the Tenant's Application seeking cancellation of a One Month Notice, they issued the Tenant a final warning and stated that the Landlord is at liberty to issue another One Month Notice if the Tenant fails to comply with their orders, which I have reproduced below as written in the June 20, 2019, decision:

I ORDER THE TENANT to refrain from knocking on TM's door unless expressly invited over by TM; to refrain from asking to use TM's phone; and, to stop giving TM letters or notes effectively immediately upon receipt of this decision.

I ORDER THE TENANT to refrain from unreasonably disturbing any occupant or tenant of the property, including the landlord, effectively immediately upon receipt of this decision. This includes refraining from knocking on doors of the landlord outside of office hours; knocking on the doors of other tenants unless expressly invited by that tenant; name-calling, making rude gestures, yelling, shouting, screaming or making any other unreasonably loud noise; making threats of physical harm to person or property; asking other tenants or occupants or the landlord to use their phone or for money while in the park.

I ORDER THE TENANT to not go behind the counter in the landlord's office or elsewhere admittance is not permitted by the tenant effectively immediately upon receipt of this decision.

The Tenant was also strongly cautioned by the Arbitrator in the decision that if they want their tenancy to continue successfully, they must comply with their orders and advised that a failure to do so may result in the issuance of a subsequent One Month Notice.

The Landlord submitted four written witness statements purportedly written by other occupants of the Manufactured Home Park. In one statement dated August 25, 2022, the author S.S. stated that on June 14, 2022, they heard the Tenant advise the Landlord to "go back to your country where you belong". In an undated witness statement the author J.K. stated that on June 14, 2022, they heard a "ruckus" outside an observed the Tenant kicking over a planter and dragging objects, including a picnic table, onto the road. J.K. stated that they also heard the Tenant tell the Landlord "you don't belong in this country you lamb. Go back to your own country". Another undated witness statement by an author with the initials W.M. stated that on June 14, 2022, they were sitting in their back yard when they heard their neighbour, who is the Tenant, yelling, so they went out front. W.M stated that they observed the Tenant yelling at "Darren" to come into their yard so that they could hit them, and heard the Tenant tell the Landlord to "go Back to China" when they attempted to intervene. Finally in a witness statement dated October 27, 2022, the author B.P. stated that on June 15, 2022, they witnessed the Tenant threatening and insulting the Landlord as the Landlord attempted to serve the Tenant with documents.

At the hearing the Landlord stated that when the Tenant gets mad, they become very aggressive and disrespectful. The Landlord stated that neighbors on both sides of the Tenant have had verbal arguments with the Tenant and although they are doing their best to accommodate the Tenant as a person with disabilities, their disability is not an excuse for their behavior. The Landlord stated that the Tenants recent behavior on June 14, 2022, including racist statements towards them, is what prompted the issuance of the One Month Notice and reiterated that they should have evicted the Tenant a long time ago as the Tenant has not followed the orders made by the previous arbitrator in the June 20, 2019, decision.

The Landlord's witness K.H. stated that they were walking through the manufactured Home Park on June 14, 2022, when they witnessed the tenant approach another occupant of the Manufactured Home Park screaming. K.H. described the behavior as a tirade and verbal attacks. K.H. stated that the Tenant threw a chair and a four pack of soda, which subsequently exploded, and that when the Landlord attended to intervene, the Tenant told the Landlord to go back to their own country and went on a racist tirade. K.H. stated that the Tenant also has a long history of harassing them because the tenant does not like the people that they associate with.

The Landlord's witness J.K., who also submitted a written witness statement, stated that they were home on June 14, 2022, where they have a view towards the Manufactured Home Park office and the Tenant's home. J.K. stated then on June 14, 2022, they witnessed the Tenant kick over a planter and push a picnic table onto the road. They described the Tenant as kicking, waving their arms, and throwing stuff onto the road. J.K. stated that the Tenant attempted to pick a fight with their neighbor "Darren", before calling the Landlord a lamb and telling them to go back to their own country.

The Tenant stated that the Landlord ruined their peace and quiet by putting a planter in front of their trailer without their permission. The Tenant denied the allegations against them and called the credibility of the witnesses who appeared at the hearing and submitted written statements into question stating that they themselves have RCMP files against K.H. and that the witnesses are not being truthful as they are the Landlord's closest friends. The Tenant stated that they get along with just about everyone, that they lend assistance to the Landlord late at night, and that they are not racist. The Tenant also pointed to 7 character references submitted in their defence.

Although the Landlord stated that they were willing to allow the Tenant to continue their tenancy until the end of December, they stated that the tenancy has to end as the

Tenant simply cannot control themselves and their behavior is a consistent problem. The Tenant wanted to continue their tenancy stating that it took them a long time to get good neighbors, that there is a 0% vacancy rate in their community, and that they are a senior and a person with disabilities. The Tenant also stated numerous times during the hearing that they would not be here, by which I have taken the Tenant to mean the hearing, if the Landlord had not violated their rights and dumped a 350-pound planter in front of their site without their permission.

Analysis

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 person permitted in the Manufactured Home park by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the Manufactured Home Park. Although the Tenant argued that the Landlord does not have grounds to end the tenancy under section 40 of the Act, for the following reasons I disagree.

The Landlord and two witnesses appeared at the hearing and provided compelling affirmed testimony that on June 14, 2022, the Tenant had engaged in inappropriate and unreasonably disruptive behavior, including screaming, dragging and throwing things into the road, attempting to instigate a physical fight with their neighbor, and uttering racist comments towards the Landlord. Three other written witness statements were also submitted by three other persons purporting to be occupants at the Manufactured Home Park, describing the same incidents. Although the Tenant called the credibility of the witnesses into question, their reason for doing so was predicated on their belief that the Landlord is friends with a number of the witnesses and an allegation that they themselves have RCMP files against one of the witnesses. I find that the testimony provided in the hearing by the Landlord and two witnesses is supported not only by the written witness statements of three other occupants of the Manufactured Home Park, but also the previous decision from 2019 submitted by the Landlord wherein an arbitrator found that the Tenant has engaged in similar behavior in the past and ordered them to cease this behavior. As such, I prefer the evidence of the Landlord and their witnesses in this regard and dismiss the Tenant's argument that neither the Landlord nor the witnesses are credible.

Although the Tenant submitted numerous support letters stating that they are nice, helpful, and in the opinion of the author, not racist, I note that none of them state that they were present on June 14, 2022, at the time of the incident(s). As a result, I do not

find that these very general reference letters about the Tenant's good character outweigh the compelling evidence before me from the Landlord and five witnesses to the incident(s), that the Tenant engaged in the alleged behavior on June 14, 2022. Further to this, I cannot simply infer that the Tenant did not engage in the alleged behaviour simply because of their general good character, especially in the presence of overwhelming evidence to the contrary.

I am also satisfied that the Tenant was already provided with an opportunity to change their significantly disturbing and problematic behavior when the arbitrator cancelled a previous One Month Notice in 2019, and ordered the Tenant to refrain from unreasonably disturbing other occupants or the Landlord by doing things including but not limited to screaming, shouting, and making threats of physical harm to persons or property. I also find that they were duly warned by the arbitrator in the June 20, 2019, decision that a failure to abide by these orders may result in the issuance of another One Month Notice. Despite this opportunity and these warnings, I am satisfied that the Tenant was either unable or unwilling to change their behavior.

Based on the above I am satisfied but the tenant significantly interfered with or unreasonably disturbed both other occupants of the Manufactured Home Park and the Landlord and that the Landlord therefore has grounds under section 40(1)(c)(i) of the Act to end the tenancy. As the Tenant acknowledged receipt at the One Month Notice on June 15, 2022, and I find that the One Month Notice in the documentary evidence before me complies with section 45 of the Act, I therefore dismiss the Tenant's Application seeking cancellation of the One Month Notice and I grant the Landlord an Order of Possession for the site pursuant to section 48(1) of the Act.

Given the Tenant's testimony regarding vacancy rates in their community, the fact that the Tenant is a person with disabilities, the long duration of the tenancy, the time of year, and the fact that the Tenant will need to move or sell the manufactured home, obtain the Landlord's consent to assign or sublet their manufactured home site to a new occupant of their manufactured home, or abandon the manufactured home, and pursuant to Residential Tenancy Policy Guideline (Policy Guideline) #54, I find it would be unreasonable to expect the Tenant to vacate within either 2 days or by the end of this month. I therefore grant the Landlord an Order of Possession for January 31, 2023, pursuant to sections 48(1) and 48(3) of the Act. I also order that all rights and obligations under the tenancy agreement and Act continue until the tenancy is ended, including but not limited to the Tenant's obligation to pay rent.

Conclusion

The Tenant's Application is dismissed in its entirety without leave to reapply.

Pursuant to sections 48(1) and 48(3) of the Act, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on January 31, 2023, 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 made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 9, 2022

Residential Tenancy Branch