



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

RTB-136

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Manufactured Home Park Tenancy Act*, SBC 2002, c. 77, as amended for the following:

- an order to cancel a One Month Notice to End Tenancy for Cause pursuant to section 40;
- recovery of the filing fee pursuant to section 65 of the *Act*.

The tenant attended with the advocate LA ("the tenant"). The agent RL attended for the landlord ("the landlord").

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

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the *Act*, I was required under section 45 of the *Act* to grant an Order of Possession in favour of the landlord. Section 45 states as follows:

45 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Issue(s) to be Decided

Residential Tenancy Branch

#RTB-136 (2014/12)



Is the tenant entitled to an order cancelling the One Month Notice and an award for reimbursement of the filing fee?

Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed as follows.

The landlord operates a manufactured home park. The tenant rents a site on which she situated a manufactured home. The tenant's son lives with the tenant.

The parties agreed on the background of the tenancy:

INFORMATION	DETAILS
Tenancy Agreement, Signed, Submitted	yes
Type of Tenancy	Month-to-month
Beginning Date	January 29, 2015
Rent payable on first of month	\$388.00

Warning Letter

The landlord submitted a warning letter to the tenant dated July 28, 2022, as follows:

This is a letter concerning the individuals you have who either live at or frequent your home.

First of all it has been reported to me that Della and Ramon are living there. I expressly informed you in a letter dated February 25, 2022 that they are not welcome to live in the park. They were evicted for cause from a unit they dwelt in right behind your home, this is common knowledge to you. We will not approve them merely moving to another unit in the same park.

They need to leave on or before August 5th or:

Failure to do so could result in further legal action that may include ending your tenancy

Secondly it has been reported to me that Dustin has been causing disturbances in the park. These include but are not limited to:

- 1) Banging on your propane tank "like a drum" for long periods of time
- 2) Banging and slamming garbage cans
- 3) Throwing rocks at neighbours
- 4) Throwing "stuff" on your roof during arguments
- 5) Taking other tenants garbage cans
- 6) Occasions where the police have come and removed Dustin in handcuffs presumably for the disturbance inside the home

Dustin can no longer live in the park. He must leave on or before August 5th or:

Failure to do so could result in further legal action that may include ending your tenancy

If you have any questions, please call

[signed by

landlord]

The landlord submitted copies of several letters of complaint supporting the claims in the letter of July 28, 2022, reproduced above. The landlord testified that the situation worsened with respect to the tenant's son's behaviour after the issuance of the Notice.

The tenant acknowledged receipt of the warning letter.

One Month Notice

The parties agreed the landlord issued a One Month Notice as follows:

INFORMATION	DETAILS
Type of Notice	One Month Notice
Date of Notice	September 29, 2022
Effective Date of Notice	October 31, 2022
Date and Method of Service	In person, acknowledged
Effective Date of Service	September 29, 2022
Application for Dispute Resolution filed - date	October 4, 2022, within time

A copy of the Two Month Notice was submitted which is in the RTB form. The reasons for the issuance were:

- Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant has engaged in illegal activity that has, or is likely to damage the landlord's property;
- Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
- Breach of a material term

The landlord relied on the first ground, that is, that the tenant *significantly interfered with or unreasonably disturbed another occupant or the landlord*.

The Notice stated:

The tenant has a son that lives at home that is causing significant problems that interfere with the neighbours ability to peacefully enjoy their homes [...]

The landlord submitted many letters of complaint predating the issuance of the Notice. As well, the landlord submitted the following letter dated January 23, 2023, in which a resident described the actions of the tenant's son in September 2022, just before the Notice was issued.

At that time, the tenant's son smashed a window and pushed a mattress out of it. Another time, he threw a sharp object aimlessly which the witness said could have hurt someone. The witness is frightened and said that children who see the tenant's son's outbursts are frightened as well. The letter stated in part, as written:

In September of 2022 I took up residence in [park] . [...] the very first night of my taking possession ...I witnessed the first of a number of publicly shared displays of Anger and physical and verbal upturnings of garbage cans, spilling contents... smashing and bashing a derelict vehicle ... smashing of a window facing my own living room window

Objects of large proportions such and a small mattress and all bedding stuffed through the window . Anything and everything imaginable would be throws .. accompanied with loud yelling and heavy metal . [...]In some of these upsetting occasions ... children have been present and witnessing the events.

In many instances . the police have attended ... They appear to find the situation... nothing more than a routine call. ... In fact, I am aware that unless [the son of the tenant] actually deliberately harms someone physically either intentionally or in the course of reckless acting out publicly

Yester day... I returned to the park from shopping in a second vehicle . to witness [tenant's son] hurling a huge water cooler bottle across the property of number 18 and ricochet... hitting my GMC truck parked in my driveway. I then before I could park ... witnessed [tenant's son] hurl a second bottle down the center of the road which is a steep 20 % grade decline down to S Broadway Ave. after hitting objects of the terrain and driveways all the way down .. It came to rest in the drive way of a home at the entrance of our park. I exited my vehicle and said . [tenant's son] you need to stop throwing things

[[The tenant's son] bound up into a bedroom window . six feet up and in moments began to stuff a mattress through the now completely missing window. all bedding and debris followed . He then jumped out again. and picked up a white broken piece of molding approx twenty four by four inches with a sharp lateral break causing it to resemble a sword. He brandished it and yelled " [...] He ran frantically back and forth on the land rented by #18 currently vacant . He picked up something small and metal and hurled it over the top of #18 . I heard it strike my add on on my own home

[...] When the police arrived they removed the white (potential weapon he had dropped beside the garbage can... I am not able to state as to whether They were able to gain entry to the

home where [tenant's son] was now inside. they stayed no longer than five minutes . I do not know if he in fact opened the door. [...]

These outbursts are intense...nerve racking ...frightening to my neighbour's small children. the shattered glass in his window now replaced and again smashed and jagged is in and of itself not pleasant to see. Littered objects and garbage is prevalent and since the one which occurred also wherein an entire mattress and bedding lay in the yard on New Year's eve and Day... I can say... enough is enough.

I now speak for myself. I am NOT able to feel safe and have a sense of wellbeing .. in my own home . let alone be able to experience Happiness and reasonable enjoyment of the common lands and my yard ... with this Man behaving like this. I understand there is an ongoing concern and history regarding this individual. and His Mother. I wish them the best. Hope they can perhaps find peace and whilst doing so..consider the lack of peace that others in their community are experiencing It is very difficult to be safe from harm and not aggravate an acting out person. whilst calling the police .

Tenant's Evidence

The tenant acknowledged receipt of copies of the many letters of complaint submitted in evidence by the landlord.

During the hearing, the tenant acknowledged the truth of the description by the landlord and in the witnesses' letters of her son's behaviour. The tenant stated that her son has caused disruption and noise as alleged. She agreed the police had been to her home several times about her son.

However, the tenant explained that her son is a mentally disturbed 40-year-old who struggles with addiction and cannot live on his own. The tenant believed that some of his behaviour stemmed from other people's taunts. She testified her son behaved better if he is supervised. However, she has been unable to secure supervision of her son especially when she leaves home for any time.

The tenant submitted no plans to curtail or supervise her son's behaviour. The parties have been waiting for a hearing since early October 2022, a period of almost 4 months. Considerable time was spent during the hearing discussing possible solutions to no avail.

The tenant adamantly stated she would not ask her son to leave no matter what he did.

In summary, the landlord requested an Order of Possession. The tenant requested the One Month Notice be dismissed.

Analysis

Credibility

The landlord provided credible well supported evidence which was believable in all respects. The tenant agreed with much of it. She did not dispute the description of the disturbing actions by her son or the presence of the police many times.

However, the tenant asserts that her son has no where else to go. He can only live with her. She will never ask him to leave no matter what he does.

I find the landlord and witness statements to be consistent with the events surrounding the tenant's tenancy as I understand them. I find the tenant's son to be unpredictable and given to erratic behaviour disturbing the landlord and park occupants. I accept that neighbours are afraid of the tenant's son. I find it reasonable in the circumstances that occupants are scared and anxious about what the tenant's son will do next.

I find the tenant has refused to ask her son to leave and will likely continue to do so.

Burden of Proof

Pursuant to section 51(2) of the *Act*, the landlord has the onus to prove the alleged grounds for the issuance of the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their onus to prove their position.

As stated above, I find the landlord has met the burden of proof with respect to their claim and has established a probable version of events amounting to "significant interference" under the *Act*.

Section 40 of the Act allows a landlord to end a tenancy on one month's notice for certain reasons.

Section 40 of the *Act* states in part:

Landlord's notice: cause

40 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

- (d) the tenant or a person permitted on the manufactured home park by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park, ...

The landlord issued and served the One Month Notice on September 29, 2022. The tenant filed the Application for Dispute Resolution within the time allowed.

Therefore, the burden shifts to the landlord to prove the reasons on the Notice. The landlord must now show on a balance of probabilities, which is to say, it is more likely than not, the tenancy should be ended for the reasons identified in the Notice.

In reaching my Decision, I have considered the documentary evidence and the testimony of each of the participants.

On a balance of probabilities and for the reasons stated, I find the landlord issued the Notice for valid reasons. I find the cumulative effect of the landlord's evidence to establish that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord by allowing her son to reside with her in her home.

I accept the landlord's testimony and the documentary evidence and find the most likely version of events as follows. The landlord has warned the tenant. The tenant has refused to take any steps whatsoever to address the situation of her son's unacceptable behaviour. The tenant defiantly allowed her son to live with her where he is sometimes unsupervised as she feared he would be made homeless if she makes him move out. The tenant protected her son although cognisant of why the landlord was seeking to end the tenancy. The tenant expressed indifference to the effect on occupants of the park of her son's behaviour. The wellbeing of her son took primacy. The tenant took no effective action to protect the park occupants from the actions of her son.

I find the landlord's and witnesses' expressed fear to be reasonable in the circumstances.

By acting as she did, the cumulative effect of the tenant's actions and indifference to consequences amounts to seriously disturbing the landlord and other occupants.

I find as follows. Considering the testimony and evidence in its totality, I find the landlord has met the burden of proof that the tenant's cumulative actions, by tolerating her son's repeated and unpredictable behaviour as an occupant of her home, has significantly interfered with the landlord and other occupants of the park under the Act. As a result, I find the landlord has established grounds for the issuance of the Notice as claimed.

Based on the parties' uncontradicted testimony and a review of the Notice, I find the Notice complied with section 52 of the *Act*.

I therefore dismiss the application to cancel the Notice and I uphold the Notice.

Referenced earlier, section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

- (a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Based on my decision to dismiss the application to cancel the Notice and my finding that the landlord's Notice complies with the *Act*, I find that this tenancy ended on the effective date in the Notice.

As the tenant is still in occupation of the unit, the landlord is therefore entitled to an Order of Possession. As requested by the landlord, I grant an Order of Possession effective on 2 days notice.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant an Order of Possession to the landlord effective 2 days after service on the tenant. Should the tenant fail to comply with this Order of Possession, the Order of Possession may be 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 *Residential Tenancy Act*.

Dated: February 25, 2023

Residential Tenancy Branch