



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 0868732 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 60;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 40;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 65.

TL and MK appeared as agents for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. All parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. All parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 82 and 83 of the *Act*, I find that the landlord duly served with the tenant's application evidence. The tenant confirmed that they did receive the landlord's evidence, but the evidence was served late. The tenant testified that they did have the opportunity to review the documents. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. In this case I am satisfied that the tenant had an opportunity to

review the landlord's evidentiary materials. Accordingly, I allow the landlord's late evidence to be admitted for the purposes of this hearing.

The tenant confirmed receipt of that the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) dated September 23, 2022, with an effective date of October 23, 2022, which was placed in the tenant's mailbox. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 81 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This manufactured home park tenancy began in April 2011. Monthly pad rental is currently set at \$379.00, payable on the first of the month.

The landlord served the tenant with a 1 Month Notice to End Tenancy on September 23, 2022 on the following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord provided the following submissions for why the 1 Month Notice was issued. The landlord testified that the tenant has been residing in the manufactured home park since 2011. Around 2020, the tenant became quite confrontational with the park

manager, which interfered with the daily operations of the manufactured home park. The park manager retired in December 2022.

The landlord testified that the tenant was texting and harassing the landlord, who had to block the tenant. The landlord testified that the tenant would also put furniture in front of the office on purpose in order to disturb park operations.

The landlord confirmed that they did try to resolve the matter with the tenant, as demonstrated by the letter dated December 16, 2022. The letter states that the landlord had decided to cancel the hearing, and wanted to have a fresh start with the tenant. The landlord testified that despite their attempt to settle the matter, the tenant still requested the reimbursement of the \$100.00 filing fee and an additional \$120.00 in compensation. The landlord testified that they felt this request constituted blackmail on part of the tenant, and decided to proceed with the hearing instead. The landlord is requesting an Order of Possession pursuant to the 1 Month Notice.

The tenant does not deny that they were involved in a dispute with the previous park manager. The tenant testified that there was an altercation in the late spring after the tenant told the manager to “do your job”. The tenant testified that there was built up frustration, and admitted that they could have handled the situation better. The tenant testified that they did not receive the 1 Month Notice until many months later.

The tenant does not deny moving garbage to the area in front of the park office, and testified that the reason they did this was because the garbage was not being picked up from the original location. In an effort to have the items removed, the tenant moved the items to the new location.

The tenant testified that their intention was not to blackmail the landlord. The tenant testified that they were under the impression that they had the right to ask for reimbursement for the filing fee and the cost of preparing for the hearing. The tenant testified that there were also non-tenancy disputes between them and the owner, and are not relevant to the hearing.

Analysis

Section 40 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may dispute the 1 Month Notice by filing an application for dispute resolution within ten days of the date that the tenant receives the notice. As the tenant filed their application within the time limit under the *Act*, the onus, therefore, shifts to the landlord to justify the end of this tenancy on the grounds provided on the 1 Month Notice.

In light of the conflicting testimony between both parties, I am not satisfied that the landlord has established on a balance of probabilities that the conflict arises solely from the tenant's actions, but rather interpersonal difference between the parties. I am not satisfied the landlord had provided sufficient evidence to support that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, or that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, especially to the extent that justifies the ending of this tenancy.

Although the 1 Month Notice references harassment, and the agents in the hearing believed that the tenant was blackmailing them, I do not find these beliefs to be supported in evidence. I find that the tenant was forthright in their testimony, and admitted to the frustration they felt in dealing with the previous park manager.

Although I acknowledge that the tenant's behaviour and words could have been considered offensive or upsetting, I do not find the behaviour to be serious enough to justify the ending of this tenancy. As both parties confirmed in the hearing, the tenant was provided with a letter on December 16, 2022 from the landlord's agent TL, stating that the landlord had decided to cancel the hearing, and have a fresh start with the tenant. I find that the landlord had clearly changed their mind after the tenant proceeded to request the reimbursement of the filing fee and an additional \$120.00 in compensation for their time. I do not find this request amounts to "blackmail" as believed by the landlord as the tenant does have the right to apply for reimbursement of the filing fee in accordance with section 65 of the *Act*. Furthermore, the tenant truly believed that they also had the right to request monetary compensation for their time. I do not find that these requests amount to behaviour that justifies the ending of this tenancy on the grounds of the 1 Month Notice.

The landlord also referenced other behaviour on part of the tenant, such as the placing of furniture and garbage in front of the park office. In this case, although perhaps not in line with the protocol or rules of the Park for garbage removal, the tenant provided an explanation for why they had decided to do this. I am not convinced that this was done in an effort to disturb or interfere with the landlord, but rather this was the tenant's misguided attempt to solve a problem.

I do not find that the landlord had established that this tenancy should end on the grounds provided on the 1 Month Notice. I find much of the dispute arises out of an interpersonal dispute between the tenant and the old park manager, and a misunderstanding between the parties about the tenant's actions and intentions. Accordingly, I am granting the tenant's application for cancellation of the 1 Month Notice. The 1 Month Notice dated September 23, 2022 is hereby cancelled, and the tenancy is to continue until ended in accordance with the *Act* and tenancy agreement.

I note that the tenant requested monetary compensation in the amount of \$120.00 for the tenant's time in dealing with this matter. As the legislation only allows an applicant to recover the filing fee, and not other costs associated with the filing of an application, I dismiss the tenant's application for monetary compensation without leave to reapply.

As I am not satisfied that there are any further orders required, I dismiss the tenant's application under section 55 of the *Act* without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was partially successful with their application, I allow the tenant to recover half of the filing fee.

Conclusion

The landlord's 1 Month Notice to End the Tenancy dated September 23, 2022 is cancelled and is of no continuing force or effect. This tenancy is to continue until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$50.00 for recovery of half of the filing fee by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$50.00, and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's application is dismissed without leave to reapply.

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: February 28, 2023

Residential Tenancy Branch