



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Manufactured Home Park Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing was convened following the director's decision dated December 12, 2022, ordering that a previous decision dated March 2, 2022 be suspended until a new hearing take place. In the director's review consideration decision dated December 12, 2022, the director ordered that the review applicant (the tenant) must serve a copy of that decision, the original application and the tenant's evidence upon the other party (the landlords) within 3 days of receipt of the decision. The decision also notes that at the new hearing, the review applicant (the tenant) would be required to demonstrate how the documents have been served to the landlords.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing to enable the tenant to call into this hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord CS testified that cell service in and around the manufactured home park is unreliable and that she told the tenant that she should either go to a place where she could reliably obtain cell service or find a landline to call in from.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the tenant.

This hearing dealt with the application filed by the tenant pursuant the *Act* for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to section 40; and
- Authorization to recover the filing fee from the other party pursuant to section 65.

Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

Can the tenant recover the filing fee?

Background and Evidence

The landlords gave the following undisputed testimony. Although the tenant was ordered to serve a copy of the review consideration decision upon them within 3 days of receiving the decision, they were never served with it. They received a copy of the review consideration decision via email from the Residential Tenancy Branch.

The landlords testified that the landlord JM personally served the tenant with the 1 Month Notice to End Tenancy for Cause on October 8, 2021. A copy of the notice to end tenancy was provided as evidence and provides 2 reasons for ending the tenancy:

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. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

On the form, under “details of cause” the landlord did not fill in any details of the events, however the landlords testified that the tenant well aware of the issues significantly interfering with or unreasonably disturbing the other occupants of the manufactured home park and themselves as landlords. Copies of the text messages advising the tenant of the material terms of the tenancy being breached were provided into evidence.

The landlords provided copies of text messages to the tenant advising that the tenant has possessions stored in the “compound” and around her manufactured home site that needed to be cleaned up. The tenant’s son also had a pitbull dog that lunged at other occupants of the park and made them feel unsafe. Despite repeated conversations and a text asking for the dog and the “clutter” to be removed by August 31, 2021, the tenant had not complied. The landlord provided photographs of the tenant’s site, taken on

March 22, 2021 and October 19, 2021 as evidence of the clutter that disturbs the other occupants of the park.

While the dog was permanently removed from the park in the summer or fall of 2021, the tenant's site remains cluttered and messy. A bylaw officer has sent a letter to the landlord regarding the site but it was not provided to me as evidence for this hearing.

Analysis

The landlords testified the tenant was served with the 1 Month Notice to End Tenancy for Cause on October 8, 2021 and the tenant filed her application to dispute the notice on October 15, 2021 in accordance with section 40 of the Act.

The Residential Tenancy Branch Rules of Procedure state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The tenant did not attend the hearing which was scheduled by conference call at 9:30 a.m. and concluded at 10:20 a.m. As she did not attend, she did not present evidence regarding the merits of her claim for me to consider. Consequently, in the absence of evidence from the tenant, the landlord's evidence is undisputed. Based on the landlord's undisputed testimony and evidence supplied, I find the grounds for ending the tenancy are valid.

I find that the other occupants of the manufactured home park and the landlord were unreasonably disturbed by the clutter left in and around the tenant's manufactured home site. I also find that the tenant was given written notice on May 31, 2021 to clean up her site and didn't do so by the reasonable time frame of August 31, 2021.

Consequently, I uphold the landlord's notice to end tenancy for cause issued on October 8, 2021.

Section 48(1) states that 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 manufactured home site if

- a) the landlord's notice to end tenancy complies with section 45 [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.

I have reviewed the landlord's notice to end tenancy and find that it complies with the form and contents provisions as set out in section 45, however the details of cause are missing from the form. Pursuant to section 61(1), I find that, after reading the texts sent to the tenant, she knew, or ought to have known the information that was omitted from the notice, and I amend the notice to reflect this.

The landlord is therefore granted an Order of Possession. As the effective date stated on the notice to end tenancy has passed, I issue the Order of Possession effective April 30, 2023 at 1:00 p.m.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on April 31, 2023**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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 *Manufactured Home Park Tenancy Act*.

Dated: April 13, 2023

Residential Tenancy Branch