



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, MNDCT, PSF, FFT

Introduction

This hearing was convened as a result of the Tenant's application under the *Manufactured Home Park Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated January 17, 2023 (the "One Month Notice") pursuant to section 40;
- compensation of \$800.00 for monetary loss or money owed by the Landlord pursuant to section 60;
- an order that the Landlord provide services or facilities required by law pursuant to section 21; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 65.

The Landlord and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The parties confirmed receipt of each other's documentary evidence for this hearing.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Dispute Address

The Landlord confirmed the correct dispute address for the site. Pursuant to section 57(3)(c) of the Act, I have amended this application to correct the dispute address.

Preliminary Matter – Severing Unrelated Claims

Rules 2.3 and 6.2 of the Rules of Procedure state as follows:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

(emphasis underlined)

The Tenant has applied to cancel a notice to end tenancy and has included other claims in this application. Aside from the claim to recover the filing fee, I find the Tenant's other claims in this application are unrelated to the One Month Notice. Pursuant to Rule 6.2 of the Rules of Procedure, I sever and dismiss those unrelated claims with leave to re-apply.

Issues to be Decided

1. Should the One Month Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to reimbursement of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on September 1, 2022 and is month-to-month. Rent is \$700.00 due on the first day of each month. Water, sewer, electricity, and internet access is included in the rent.

The Landlord named in this application is the manager of the park at Wildwood Campsite. According to the Landlord, the Tenant's site was rented under a verbal agreement and was to be seasonal only. The parties had a prior dispute resolution proceeding in December 2022 regarding the Tenant's application for emergency repairs. The arbitrator in that case found there was jurisdiction to proceed under the Act but ultimately dismissed the Tenant's application.

The Landlord issued the One Month Notice to the Tenant on January 17, 2023, with an effective date of March 1, 2023. The reasons for this notice are:

- 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
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk

The One Month Notice provides the following details of cause (portions redacted for privacy):

The events that have lead up to this eviction being served is [Tenant] has refused to attach a proper rv sewer pipe from her motorhome to our sewer system. The pipe she is using has already leaked and led to a sewer blockage from freezing in which we repaired and cleaned up from she had been asked several times before this incident to connect a proper pipe that was not leaking. I have asked [Tenant] to hook up a correct pipe as there is a danger of a sewage leakage which is bio hazard and causes seriuous health and safety issues to our property and to other residents of the park. [Tenant] has refused to hook up a proper pipe system to our sewer services which is putting our RV park at danger of serious health and safety concerns. If there is any sewage leakage on the ground [health authority] has said it needs to be cleaned up within 24 hours as it is a bio hazard and unsafe for any animals or people in the vicinity and is very costly to have cleaned up and allows contamination to seep into the ground which can effect our water system. For these reasons [Tenant] is being asked to leave the park.
(sic)

The Tenant indicated that she received a copy of the One Month Notice attached to her door on January 17, 2023.

The Landlord gave the following testimony and evidence:

- On or around November 20, 2022, the Tenant informed the Landlord that her water was frozen. The Landlord inspected the Tenant's site, which is an all-season/winter site. The Landlord determined that due to a lack of proper winterization by the Tenant, the water line had frozen. The Landlord then determined that the Tenant's sewer pipe was leaking where it was glued. The Tenant had told the Landlord, RC, and others at the park that she was suing the company that had installed her pipe for the leak. The Landlord submitted a witness statement from RC dated April 19, 2023.
- The Tenant uses a solid, permanently glued PVC pipe for hookup to the park's sewer services, which is an incorrect type of pipe for the park's connection. The Tenant should be using a corrugated, accordion-type hose so that it can move with the Tenant's RV. If the Tenant's motorhome moves or fluctuates, the solid pipe can come apart where it is glued and cause a leak. It would cost approximately \$65.00 for the Tenant to purchase a proper accordion pipe. Everyone else in the park used a proper hose in the winter and did not have issues.
- The Tenant was issued a written warning on January 4, 2023 about the incorrect pipe leaking raw sewage into the ground, and was given 5 days to fix the leak. The Tenant has refused and continues to refuse to switch to the correct pipe. The Landlord sent additional warnings via email.
- On or around January 12, 2023, the Landlord and RC went to look at the Tenant's sewer connection as the Tenant advised that it was plugged. RC and the Landlord were unable to look at the park's sewer because of the Tenant's pipe. The Tenant told RC and the Landlord that if they broke her pipe, she would sue the Landlord. The Landlord asked the Tenant to disconnect her sewer hookup and the Tenant later did so.
- On or around January 14, 2023, RC and the Landlord went to snake the Tenant's sewer line, but it did not clear the blockage. The Landlord called a plumber who found the sewer was frozen 24 ft down. The plumber did not have the equipment to resolve the issue. The Landlord then called a sanitation services company and cleared the line with hot water. The Landlord again asked the Tenant to get a proper RV sewer hose as the one she had was not correct. The Landlord informed the Tenant where to purchase a corrugated accordion pipe. If the Tenant had this pipe, the Landlord could have quickly unscrewed the pipe, cleaned up, and screwed it back on without calling sanitation services.
- The Landlord attended the Tenant's site and put lime on any sewage on the ground around the Tenant's sewer connection and removed the lime after a 24-hour period. The grounds were cleaned to proper health and safety standards.

- The Landlord informed the Tenant that the park has the right to refuse an incorrect hookup. According to item 7 of the park's policy posted in the Landlord's office, the park has the right to refuse hookup to services if a guest's connection is incorrect and may cause damage to the park's property (sewer and electrical). The Landlord advised that if the Tenant could not follow the park rules, then the Landlord would have to serve an eviction notice.
- The Tenant has yelled aggressively at the Landlord, verbally harassed the Landlord, and sent aggressive emails to the Landlord. The Tenant took pictures of the Landlord and threatened to make the Landlord "famous". The Tenant threatened to dump raw sewage in the park if the Landlord did not allow the Tenant to hook back up or pay for sewage to be removed at the Landlord's cost.
- The Tenant refused to use the correct pipe and refused to sign a waiver to be responsible for cleanup of any leaks from her pipe. The Landlord has tried in every way to reason with the Tenant and not have the Tenant leave the park, but the Tenant refuses to discuss the issue. The Tenant threatened to call the police.

The Tenant gave the following testimony and evidence:

- The pipe used by the Tenant is not incorrect and is strictly for RVs. The company that professionally installed it advised the pipe is suitable for long-term winter stays. The Tenant spent \$800.00 to have this done and the pipe is covered by warranty. There is a rubber sleeve attached to the hard PVC piping that can slide off. The pipe is not all glued, and parts of it, including the rubber sleeve and metal brackets, can be taken off in minutes. There has been no leakage from the Tenant's end of the pipes. The leak was coming from the threaded area of the pipe, indicating the sewage was coming up and over. The Tenant submitted pictures of the pipes into evidence. The Tenant submitted that rings of stains in the park's sewer are indicative of long-term sewage backup.
- The Tenant heard from previous site managers that her site is a summer site rather than an all-season site, so the pipes are not deep enough into the ground. If the Tenant had been in a regular winter site, the problem could have been avoided. It was no one's fault that it froze.
- The Tenant was without water and sewer for months. The Tenant had no choice but to hook back up. The Landlord refused to work with the Tenant and issued an eviction notice as soon as the Tenant asked for water and sewer repairs.
- There are others in the park who use hard pipes on a similar sewer station. The Tenant submitted a picture into evidence.

Analysis

1. Should the One Month Notice be cancelled?

Section 40 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 40(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 40(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 45, which states:

Form and content of notice to end tenancy

45 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the manufactured home site,
- (c) state the effective date of the notice,
- (d) except for a notice under section 38 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

In this case, I have reviewed the One Month Notice and find that it complies with the requirements set out in section 45 of the Act.

I find the Tenant was served with a copy of the One Month Notice on January 17, 2023 in accordance with section 81(g) of the Act.

Section 40(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Records of the Residential Tenancy Branch indicate the Tenant submitted this application on January 26, 2023. I find the Tenant made this application within the time limit required by section 40(4).

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Sections 40(1)(c)(ii) and (iii) of the Act state as follows:

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: [...]

(c) the tenant or a person permitted in the manufactured home park by the tenant has [...]

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk; [...]

For the reasons that follow, I find the Landlord has demonstrated that the Tenant has seriously jeopardized the health or safety of the Landlord or another occupant of the park. As such, I do not find it necessary to also consider whether the Tenant has also put the Landlord's property at significant risk.

First, I am satisfied that a sewage leak is a biohazard and can cause serious health and safety issues to the Landlord and other residents of the park.

Second, I find on a balance of probabilities that the Tenant's sewer pipe is not suitable for hooking up to the park's connection. I find both the Landlord and RC's evidence to be that the Tenant has an incorrect pipe. Furthermore, I find both the Landlord and RC's evidence to be that the Tenant had told them her sewer pipe was leaking and she was going to sue the company that did the installation. I find the pictures submitted by the Tenant do not show a leak to have occurred from further down the park's sewer connection. Instead, I find both parties' evidence to suggest that the leak occurred where the Tenant's pipe was joined to the park's sewer connection, although the parties disagree as to whether it had been permanently glued. However, I do not find that a suitable sewer pipe would leak from the point of connection when properly joined to the park's sewer system. I find there is no evidence from the company that did the installation or any warranty information about the Tenant's sewer pipe. I also do not find the evidence to show that the Tenant's site is not an all-season/winter site. Under these circumstances, I find it was more likely than not that the sewage leak had occurred due to the Tenant hooking up an incorrect or unsuitable pipe. I accept there is a serious risk that another sewage leak could occur if the Tenant does not switch to a proper pipe.

Third, I find that despite multiple written requests from the Landlord, the Tenant has refused to switch to a correct pipe. I find the Tenant denies that her pipe had caused any leaks, but also would not agree to accept responsibility for any leaks caused. I find the Tenant's position has not changed since the One Month Notice was issued.

Furthermore, I find in an email to the Landlord dated February 15, 2023, the Tenant wrote: "If you refuse to let me hook back up or to get my sewage removed in a safe and healthy way I will be forced by you to let it loose."

Based on the foregoing, I conclude that the Tenant's persistent refusal to use a proper sewer pipe has seriously jeopardized the health and safety of the Landlord and other occupants of the park, warranting an eviction under section 40(1)(c)(ii) of the Act. Accordingly, I dismiss the Tenant's claim to cancel the One Month Notice, without leave to re-apply.

2. Is the Landlord entitled to an Order of Possession?

Section 48(1) of the Act states:

Order of possession for the landlord

48(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 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.

Having found the One Month Notice to comply with the requirements of section 45 and having dismissed the Tenant's claim to dispute the One Month Notice, I find the Landlord is entitled to an Order of Possession pursuant to section 48(1) of the Act.

According to Residential Tenancy Policy Guideline 54. Ending a Tenancy: Orders of Possession, where the effective date on the notice to end tenancy has already passed, effective dates for orders of possession have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided. Relevant factors include the point up to which the rent has been paid and the length of the tenancy.

As I understand the Tenant would have paid rent to the end of this month, I grant the Landlord an Order of Possession effective 1:00 pm on June 30, 2023.

3. Is the Tenant entitled to reimbursement of the filing fee?

The Tenant has not been successful in this application. I decline to award the Tenant reimbursement of her filing fee under section 65(1) of the Act.

Conclusion

The Tenant's claims to cancel the One Month Notice and to recover the filing fee are dismissed without leave to re-apply. The remaining claims made by the Tenant in this application are severed and dismissed with leave to re-apply. Leave to re-apply does not extend any applicable limitation periods.

Pursuant to section 48(1) of the Act, I grant an Order of Possession to the Landlord effective **1:00 pm** on **June 30, 2023**. 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 *Manufactured Home Park Tenancy Act*.

Dated: June 17, 2023

Residential Tenancy Branch