



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a One Month Notice to End Tenancy for Cause.

Both named tenants and an agent for the landlord attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The tenants have not provided any evidentiary material, and confirm that all of the landlord's evidence has been received. Therefore, all evidence of the landlord has been reviewed and all evidence that I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause dated March 2, 2023 was issued in accordance with the *Manufactured Home Park Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on June 1, 2014 and both named tenants still reside in the rental unit. Rent in the amount of \$390.75 is currently payable on the 1st day of each month and there are no rental arrears. The tenants reside in a manufacture home belonging to the tenants in a manufactured home park.

The landlord's agent further testified that on March 2, 2023 the landlord served a One Month Notice to End Tenancy for Cause by handing it to one of the named tenants, who lives with the tenant named in the tenancy agreement. A copy has been provided for this hearing, and it is dated March 2, 2023 and contains an effective date of vacancy of April 30, 2023. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property park;
- Tenant or a person permitted on the property by the tenant has:
 - put the landlord's property at significant risk;
- Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

This has been ongoing for a few years, and there are always others at the tenant's manufactured home. The tenant had a motorhome in the driveway with someone living in it, plugged into the electricity in the manufactured home, running a cord through the driveway. Several complaints of other tenants have been received, concerned about people coming and going. Also, it was a hazard in winter running the electrical cord into the unit. Tenants are permitted only 1 vehicle unless given written consent, but the tenant does not comply with the rules.

The landlord gave a letter to the tenant dated June 10, 2020, and a copy has been provided for this hearing. The landlord didn't want to make the tenant sell or move the manufactured home, but things started getting worse again, yelling and swearing from the deck, but it is a family oriented park. The park manager told the tenant that if he continued police would be called.

Even after the Notice to end the tenancy was issued, the tenant continued to have the motorhome on the property, however the landlord's agent believes it is now gone. The tenant has not applied for consent to have it on the property.

The tenancy agreement contains the name of 1 tenant only, and the other occupant is not on the tenancy agreement. The tenant has sublet without the landlord's consent, which is contrary to the tenancy agreement.

The first tenant (MAH) testified that the tenants are being accused of having multiple vehicles on the property and the landlord's agent testified that only 1 vehicle is permitted, however the tenancy agreement does not state that. The driveway comfortably holds 3 parking spots and only 2 vehicles are on the property.

The park manager knocked on the door stating that everyone would get a letter, and that the fire department needs to know how many people lived in the manufactured home in case of fire, and how many vehicles there are. The tenant contacted the Regional District and fire department and was advised that no such requirements exist.

The motorhome wasn't there all the time, and was plugged into a Canadian Tire dehumidifier, the size of frying pan and pulls low watts. It is CSA approved and plugged into a CSA approved ground fault breaker system. A friend put it in there and nothing put anything into danger. That person never lived in the manufactured home or the motorhome.

The tenant named in the tenancy agreement originally lived there alone, and the occupant has lived in the manufactured home for 6 or 7 years, and the landlord knew that.

The tenants have never received a warning about the motorhome, and it was there for approximately 1 month. The owner never lived in it during that time. The owner and the tenant worked together in another community for 3 weeks off and on. The tenant allowed the co-worker to take his vehicle home each night due to the road conditions. When they watched hockey and drank alcohol, the tenant wouldn't allow the co-worker to drive home, but a few times he passed out in it. He still comes over and visits. There were never any extension cords to the manufacture home. Whenever the motorhome was there, the tenant's truck was not there. The owner's brother also resides in the manufactured home park, and the owner would park the motorhome in the driveway while visiting his brother.

No one has ever stayed overnight in motorhome, but on the couch in the tenant's manufactured home. A person cannot live in the motorhome in winter; the furnace is not for winter.

There are only 2 occupants, the tenant listed on the tenancy agreement and the other tenant named in this application. There is no risk to property.

The second tenant (DWD) testified that there has been a misunderstanding. Another agent of the landlord would drive by in the morning and no one was there; the tenants would go to work in the mornings. At night, he saw the truck.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Manufactured Home*

Park Tenancy Act, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

I have reviewed the tenancy agreement, which names 1 tenant (DWD). I also refer to Residential Tenancy Policy Guideline 19 – Assignment and Sublet, which explains that in a sublet situation, the original tenant transfers their rights under the tenancy agreement to a sub-tenant. The original tenant remains the tenant of the original landlord, and upon moving out, grants exclusive occupancy to the sub-tenant. It also states that where the original tenant, who has a tenancy agreement with the landlord, remains and rents out space within the manufactured home, is not a sublet but an occupant or roommate. The tenancy agreement does not indicate that a roommate is not permitted. Also, where the landlord has been aware of the roommate for 6 or 7 years, which was not disputed by the landlord's agent, I find that estoppel applies.

The tenant also testified that no one else lives there and the person who owns the motorhome did not live in it, but spent the night on the couch inside the manufactured home on occasion. A landlord may not restrict the tenants' guests. The tenant also explained that there are no extension cords going from the motorhome to the manufactured home, but a CSA approved ground fault breaker system, and that nothing put the landlord's property at significant risk. I am not satisfied that the landlord has proven any risk. The tenant also testified that the owner of the motorhome, who also visits his brother in the manufactured home park, did not live in it. That was not disputed by the landlord's agent.

In the circumstances and the evidence, I am not satisfied that the landlord has established that the tenant has allowed an unreasonable number of occupants on the manufactured home park site. Further, I am not satisfied that the landlord has established any significant risk, or that the tenant has assigned or sublet the rental site.

Therefore, I cancel the One Month Notice to End Tenancy for Cause and the tenancy continues until it has ended in accordance with the law.

Since the tenants have been successful with the application, the tenants are entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants in that amount, and I order that the tenants be permitted to reduce rent for a future month by that amount, or may serve the order to the landlord and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated March 2, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 60 of the *Manufactured Home Park Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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 29, 2023

Residential Tenancy Branch