



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

The Tenant seeks the following relief under the *Manufactured Home Park Tenancy Act* (the “Act”):

- an order pursuant to s. 40 cancelling a One-Month Notice to End Tenancy for Cause signed on July 28, 2023 (the “One Month Notice”); and
- return of the filing fee pursuant to s. 65.

The Landlord files his own application, seeking the following relief under the *Act*:

- an order of possession pursuant to s. 48 after issuing the One Month Notice; and
- return of the filing fee pursuant to s. 65.

I.R. attended as the Tenant. J.S. attended as the Landlord. The Landlord was represented by D.S. as his counsel.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of Documents

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 64(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Is the One Month Notice enforceable? If so, is the Landlord entitled to an order of possession?
- 2) Is either party entitled to the return of their filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

1) Is the One Month Notice enforceable? If so, is the Landlord entitled to an order of possession?

Under s. 40 of the *Act*, a landlord may end a tenancy for cause by giving at least one month's notice to the tenant. Under the present circumstances, the Landlord issued the One Month Notice pursuant to ss. 40(1)(c) and 40(1)(d)(ii) of the *Act*.

Upon receipt of a notice to end tenancy issued under s. 40 of the *Act*, a tenant has 10 days to dispute the notice as per s. 40(4). If a tenant files to dispute the notice, the onus of showing the notice is enforceable rests with the respondent landlord.

Landlord's counsel informs me that the One Month Notice was posted to the Tenant's door on July 28, 2023 and refers me to a proof of service form completed by the Landlord. The Tenant confirms receipt of the One Month Notice on July 28, 2023. I find that the One Month Notice was served in accordance with s. 81 of the *Act* and received on July 28, 2023.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenant filed her application disputing the One Month Notice on July 30, 2023. Given this, I find that she disputed the notice within the 10 days permitted to her under s. 40(4) of the *Act*.

I am provided with a copy of the One Month Notice and it describes the causes for ending the tenancy as follows:

Details of the Event(s):

On June 8, 2023 the Landlord was at the Tenant's unit checking her electrical. When the Landlord went to drive away from the unit, the Tenant blocked his vehicle in and would not let him leave.

On July 22, 2023 the Tenant ran up to the Landlord's vehicle, while he was driving in the park, and punched the driver's side window.

The Landlord now fears for his and his wife's safety.

Landlord's counsel directs me to a letter dated October 12, 2023 which is authored by the Landlord. The letter describes two incidents which led to the issuance of the One Month Notice. The first is said to have occurred in early May 2023 in which it is alleged that the Tenant stood in front of the Landlord's vehicle preventing him from leaving.

The second incident described in the Landlord's evidence is said to have occurred on July 22, 2023 where the Landlord says he was inspecting the manufactured home park for fire hazards. The Landlord explains that the Tenant approached his vehicle and punched the driver's side window. The Landlord says that he did not speak to the Tenant after she punched his window and that he left. The Landlord testified to being fearful for his safety when in the vicinity of the Tenant's manufactured home site.

The Tenant acknowledges that in early May 2023 she stood in front of the Landlord's vehicle, though clarified she did so due to the Landlord failing to address her concerns with respect to an electrical issue at her manufactured home site.

The Tenant acknowledges that she did approach the Landlord's vehicle on July 22, 2023, though clarifies that she merely tapped on his window to enquire why he had been in front of her manufactured home site. By way of some context, the Tenant testified that she witnessed the Landlord slowly driving past her site on three or four occasions, looking into the site, and that she was feeling threatened and intimidated by the Landlord.

The Tenant indicates that after tapping on the Landlord's window, the Landlord rolled his window down and said to her: "Fuck off, you cunt". The Tenant says that she immediately turned around and left. For the Landlord's part, he specifically denies rolling down his window or speaking to the Tenant at all during the incident of July 22, 2023.

I enquired whether there were any warning letters or other documentary evidence related to these two incidents. Landlord's counsel advises me that there was not and that there were no witnesses to the incidents other than the Landlord and Tenant.

Looking strictly at the issue in front of me, I cannot make a finding that one party's testimony is somehow more reliable or credible than the other. Both are equally as likely. It may be that the Tenant tapped on the window, or it may be that she punched it. I do not know.

It bears consideration that the Landlord must prove that the One Month Notice was issued properly. I find that the Landlord has failed to do so given that there is insufficient evidence to support his narrative.

The One Month Notice cannot be enforced and must be set aside.

The Landlord's claim for an order of possession is dismissed without leave to reapply.

Both parties spoke to other issues between them. For the Tenant's part, she alleges that there is an ongoing electrical repair issue and bill to be paid by the Landlord. The Landlord alleges that the Tenant speeds within the park, fails to follow the park rules, and has a dog that was not approved. Both parties provided documentary evidence related to these issues.

Strictly speaking, the ancillary issues between the parties are not directly relevant to why the One Month Notice was served, which as noted above was due to two incidents in which the Landlord alleges the Tenant threatened him. I do, however, accept that the context colours the interactions that led to the One Month Notice being served by the Landlord. It appears likely that there is some degree of communication issues between the parties.

Without attributing fault to either party, I encourage them to approach their interactions with each other pragmatically, attempt to de-escalate their current conflict, and conduct themselves in a business-like manner.

2) Is either party entitled to the return of their filing fee?

As the Tenant was successful, I find she is entitled to her filing fee. Pursuant to s. 65(1) of the *Act*, the Landlord shall pay the Tenant's filing fee. I direct under s. 65(2) of the *Act*

that the Tenant withhold \$100.00 from rent owed to the Landlord on one occasion in full satisfaction of her filing fee.

Since the Landlord was unsuccessful, I find he is not entitled to his filing fee. His claim for his filing fee is dismissed without leave to reapply.

Conclusion

I cancel the One Month Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

I dismiss the Landlord's claim for an order of possession pursuant to the One Month Notice without leave to reapply.

I grant the Tenant her filing fee and direct her to withhold \$100.00 from rent owed to the Landlord on **one occasion** in full satisfaction of her filing fee.

I dismiss the Landlord's claim for his filing fee 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: November 02, 2023

Residential Tenancy Branch