Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SPECTACLE LAKE MOBILE HOME PARK
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: CNC, FF

Introduction

This Application for Dispute Resolution was filed by the tenant seeking to cancel a One-Month Notice to End Tenancy for Cause dated August 27, 2013 terminating the tenancy effective September 30, 2013.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and any relevant evidence that was properly served.

Preliminary Matters

Service of the Tenant's Evidence

The tenant raised an objection with respect to the date that the landlord's evidence was submitted in response to the tenant's application. The tenant argued that he was not given adequate time to respond to the landlord's evidence as it was not received in sufficient time before the hearing.

I find that tenant initially submitted the tenant's application without attached evidence on September 3, 2013.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure require that an applicant serve specific documents to the respondent, together with a copy of the Application for Dispute Resolution, copies of the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch, the dispute resolution proceeding information package provided by the Residential Tenancy Branch, the details of any claim being made, and any other evidence accepted by the Residential Tenancy Branch with the application or that is available to be served.

Rule 3.4 of the *Residential Tenancy Branch Rules of Proced*ure require, to the extent possible, that an applicant file copies of all available documents, photographs, video or audio evidence at the same time as the application is filed.

Rule 3.5 of the *Residential Tenancy Branch Rules of Procedure* states that copies of any documents, photographs, video or audio evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent **as soon as possible, and at least (5) days before the dispute resolution proceeding** as those days are defined the "Definitions" part of the Rules of Procedure.

b) If the time between the filing of the application and the date of the dispute resolution proceeding does not allow the five (5) day requirement of a) to be met, then the evidence must be received by the Residential Tenancy Branch and served on the respondent at least two (2) days before the dispute resolution proceeding.

I find that, although the tenant submitted his application on September 3, 2013, the tenant's evidence package was not submitted at the same time as the application. I find that the tenant's evidence was later received by the Residential Tenancy Branch a month later, on October 3, 2013.

I find that the landlord, was affected by the delay in the tenant's serving of the tenant's evidence package.

Rule 4 of the *Residential Tenancy Rules of Procedure* states that, any evidence upon which the respondent intends to rely in disputing an Application for Dispute Resolution, must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding as those days are defined in the "Definitions" part of the Rules of Procedure.

I find that, receiving the tenant's evidence on October 3, 2013, would not afford the respondent landlord sufficient time to mail their evidence and still have it arrive "*at least five days*" before the hearing.

However, the respondent landlord did submit their own evidence package, which was apparently mailed prior to receiving the tenant's evidence. This package was confirmed by Canada Post tracking information as being sent by registered mail to the tenant on September 30, 2013. Pursuant to section 83 of the Act, mail is deemed to be received 5 days after it has been sent.

I therefore find that the landlord's evidence was deemed to have been received by the tenant on **October 5, 2013**.

The "*Definitions*" portion of the Rules of Procedure states that, when the number of days is qualified by the term "*at least*" then the first and last days must be excluded, and if served on a business, it must be served on the previous business day. Therefore, I find that evidence received on October 5, 2013 for a hearing scheduled for October 10, 2013, would not meet the "*at least*" 5-day requirement.

However, the Act also provides that, in situations where the scheduled date of the dispute resolution proceeding does not allow the five (5) day requirement to be met**,** then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant **at least two (2) days before the dispute resolution proceeding.** (my emphasis)

In this instance the landlord's evidence was served on the tenant by mail sent on September 30, 2013 and, is deemed to have been received on the 5th day after it is mailed, which would be October 5, 2013. Accordingly, I find that the landlord's evidence was still received by the tenant at least two days prior to the hearing and therefore will be considered.

Recording the Proceedings

During the hearing, the tenant advised that the hearing was being recorded. I advised the tenant that, under Rule 9.1, the Residential Tenancy Rules of Procedure prohibit recording of the hearing and specifically stating that:

> "*Private audio, photographic, video or digital recording of the dispute resolution proceeding is not permitted*."

Rule 9.2 contains provisions for arranging official recording as excerpted below:

> "*a party requesting an official recording by a court reporter must provide written notice stating the reasons for the request, to the other party and to the Residential Tenancy Branch at least two (2) business days in advance of the dispute resolution proceeding. A Dispute Resolution Officer will determine whether to grant the request and will provide written reasons, if requested. If permission is granted for an official recording of the dispute resolution proceeding by a court reporter, the party making the request must:*

(a) make all necessary arrangements for attendance by a court reporter and court reporter's necessary equipment;

(b) pay the cost of the court reporter's attendance at the dispute resolution proceeding, and the recording; and

(c) must provide all parties with copies of the recording, transcript, or both, as ordered by the Dispute Resolution Officer. "

The tenant did not agree to cease recording the proceedings at first and insisted that it was within his legal right to do so. However, after being cautioned that, by continuing to violate a Rule of Procedure, the tenant is risking having their application dismissed, the tenant agreed to cease recording the hearing and agreed to turn off the recording device. Notwithstanding the participant's initial violation of the Rules of Procedure, the hearing then proceeded.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled as requested by the tenant?

Background and Evidence

Submitted into evidence was a copy of the One-Month Notice to End Tenancy for Cause dated August 27, 2013 with an effective date of September 30, 2013.

The One-Month Notice to Notice to End Tenancy for Cause indicated that the tenant or a person permitted in the manufactured home park by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park and put the landlord's property at significant risk;

July 23, 2013 Confrontation

The landlord testified that the tenant disturbed other residents by engaging in a physical confrontation with another resident on July 23, 2013 that involved police attendance and resulted in possible charges. The landlord testified that they received two written complaints and 4 verbal complaints from residents in the park about the tenant's conduct with respect to this incident. The landlord testified that there is a court date set for the tenant to appear and submitted a copy of the provincial court calendar showing the tenant's name on the roster.

The landlord testified that this recent occurrence was the latest in an extensive history of violations of park rules by the tenant and they issued the One Month Notice to End

Tenancy for Cause and served it on the tenant in person. The landlord feels that the tenant's application to cancel the Notice should be dismissed.

The tenant disputed that he was responsible for the July 23rd disturbance and pointed out that the other person had accosted *him*. The tenant pointed out that this individual is known to be a bully. The tenant denied that there are any outstanding police charges against him or any court date scheduled.

September 13, 2013 Incident

The landlord testified that, even after they had issued the One Month Notice to End Tenancy for Cause, the tenant did not alter his conduct and, on September 13, 2013, became involved in another confrontation with a different resident in the park. The landlord testified that they received complaints from other residents about this conflict and some expressed fear of the tenant.

The landlord testified that the tenant is now subject to a restraining order by police and it is likely that the tenant will be facing assault charges.

The landlord submitted a copy of a letter from Community Corrections addressed to the other resident who was involved in the incident. The letter stated,

> "*On Sept. 13, 2013 the above named individual was arrested and charged*"

The letter also informs this other resident that a "no contact" order has been imposed and that,

> "*a condition of that Order states he is to have no direct or indirect contact with you*"

The tenant disputed that he has been, or will be, charged with assault with respect to this or any other incident.

The tenant testified that any charges contemplated by police would only pertain to making verbal threats, not a physical assault. The tenant pointed out that the police intervention in this case had resulted from a situation actually caused by the other resident, in which the tenant felt forced to protect his family. According to the tenant, the other resident will likely be the one who is criminally charged. The tenant stated that he had no choice but to take matters into his own hands since the landlord has refused to take any action to prevent bullying in the park.

Off-Road Unlicensed Vehicle Operation

The landlord testified that the tenant's underage son has persisted in riding an unlicensed motorcycle and ATV on park roads despite the fact that this is not permitted in the park rules and despite being repeatedly warned verbally and in writing that this practice must cease. The landlord made reference to Section F, Paragraphs 3, 4, 6 and 7 of the park rules in evidence that prohibit the storage of unlicensed vehicles and prohibit their use on the park roads.

The landlord submitted copies of Caution Notices issued to the tenant dated July 10, 2012, September 11, 2012, October 22, 2012, January 29, 2013 and a letter dated April 11, 2013 warning the tenant that,

> *"if noncompliance persists the Landlord will have no other choice but to exercise legal action provided by the Act to protect the safety of all out tenants which may include ending tenancies if deemed necessary*."

The landlord submitted a written chronology listing 67 separate offenses by date and location spanning the period from May 18, 2012 to August 9, 2013, in which the tenant's 14-year –old son had been seen operating an unlicensed motorized vehicle on the park roads, often at excessive speed.

The landlord also submitted a copy of a letter of complaint, dated May 18, 2013, received from another park resident about the "off road" unlicensed motorcyclists in the park.

The tenant did not deny that his son routinely drove the vehicles in question, but pointed out that a large number of residents do the same thing all the time and have not been warned or sanctioned by the landlord. The tenant testified that the landlord purposely blocked access to trails where the vehicles can legally be operated without being licensed.

The tenant testified that the landlord has unfairly concentrated on the tenant and disregarded the offenses of others.

<u>Park Rule Against Altering Structures</u>

The landlord testified that the tenant altered a structure on the property without getting written permission from the landlord as required under section "e" 5 of the Park rules which state,

> "*Any additions or alterations to the manufactured home or construction of out buildings require a building permit ….and the written permission of the Landlord before commencement of any work. No alterations or changes by the tenant to*

the site's ground level are permitted. Removing or adding of fences, sidewalks, shrubs and trees on the site require written permission of the landlord."

The tenant did not deny commencing demolition work on the building without first obtaining written permission from the landlord. The tenant defended his actions by pointing out that he was merely removing an unsafe garage and replacing it with one that is properly built, which, according to the tenant, is permitted under the building bylaws which prevail over park rules.

The tenant testified that he is in the process of getting a building permit. The tenant acknowledged that he has never requested written permission from the landlord as he feels this is an intrusion on his rights. The tenant's position is that the municipal laws, the safety of his family and human rights take precedence over the Park Rules and he feels that he is entitled to proceed with the construction once the building permit is finalized.

Hostile Conduct

The landlord testified that the landlord and two witnesses approached the tenant to talk about the garage construction work and, according to the landlord, the tenant became belligerent and refused to cooperate in the conversation. The landlord testified that the tenant yelled at the landlord and used profanities. The landlord submitted a written statement from one of the witnesses attesting to the use of abusive language, screaming insults and acting in a hostile manner. The landlord testified that, on July 5, 2013, the tenant was issued a letter regarding the park rules and the specific requirements to be met before constructing a garage. A copy of this communication, titled "*STOP WORK ORDER*" is in evidence.

The tenant and his witness denied that any profanity, screaming or abusive conduct was used when the landlord attended the tenant's site. The tenant pointed out that the landlord had continually violated the tenant's rights by trespassing onto their site without proper Notice.

The tenant believes that cancelling the landlord's One Month Notice to End Tenancy for Cause is justified under the circumstances.

The landlord feels that the tenant's application to cancel the One Month Notice to End Tenancy for Cause has no merit and should be dismissed. The landlord is seeking an Order of Possession.

Analysis

I find that any of the above incidents, if they transpired as described by the landlord would justify terminating this tenancy for Cause under the Manufactured Home Park Tenancy Act. However, the tenant disputed much of the landlord's testimony.

Section 22 of the Act also protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
>
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Based on the Act, I find that every tenant in the park is entitled to be free from unreasonable interference and disturbance.

I accept that there were two serious confrontations between this tenant and other residents and that these incidents likely had the effect of significantly disturbing the landlord and other residents in the park.

Although the tenant has taken the position that each of the other parties involved in the confrontations were primarily responsible for what transpired, I find that, even if this is true, it does not serve to limit or lessen the obligation of this tenant to avoid unreasonably disturbing other residents in the park nor the consequences thereof.

The tenant denied the accuracy of the landlord's information with respect to the allegations that there are criminal charges pending against him, which the landlord had held out as proof that the tenancy should be terminated.

I find that, the issue of whether or not there are criminal charges pending against this tenant, or anyone else involved, not to be particularly relevant to determining if the tenant unreasonably disturbed or significantly interfered with the landlord and other residents in the park. I find that, to justify ending a tenancy for cause, the landlord does not need to establish conduct warranting criminal charges, only noncompliance with certain sections of the Residential Tenancy Act.

In regard to the tenant's persistent violation of the park rule against operating unlicensed vehicles, including motorized dirt bikes or ATVs, on park roads, even after being warned not to do so, I find that the tenant's continued contravention of these rules cannot be excused by virtue of the fact that many other violations of this rule exist in the park.

I find that the use of these unlicensed vehicles, particularly driven by an unlicensed juvenile, not only violated the park rules, but significantly disturbed other residents in the park over a prolonged period of time.

All residents are entitled to quiet enjoyment of their homes under the Act and the expectation is that the park rules must be honoured. Moreover, I find that the landlord is also entitled to protect their property and limit their liability by enforcing the park rules and the Act.

I find that the tenant's attempt to excuse repeatedly disobeying the rules and his position that he is exempt from the consequences of violations, shows that the tenant is not apologetic about the conduct and is likely to continue to violate any particular park rule with which he disagrees

The above observation also applies to the tenant's insistence that he was not obligated under the park rules to obtain written permission before dismantling, altering or rebuilding structures on the rental site, despite the fact that this is clearly stated in detail within the park rules. I do not accept the tenant's stated position that other applicable municipal laws over-ride the park rules and exempt him from having to follow them..

I make no finding with respect to the tenant's argument that following park rules would violate his human rights.

Based on the evidence before me, I find that the tenant's application seeking to cancel the One-Month Notice to End Tenancy for Cause must be dismissed because the One-Month Notice to End Tenancy for Cause is supported by the evidence before me.

At the hearing the landlord made a request for an order of possession. Under the provisions of section 48(1) of the Act, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

Accordingly, I hereby grant the landlord an Order of Possession based on the One-Month Notice to End Tenancy for Cause, ending the tenancy two days after service of the Notice on the tenant.

This order must be served on the tenant and may be enforced through B.C. Supreme Court if necessary.

Conclusion

The tenant is not successful in the application and the request to cancel the One-Month Notice to End Tenancy for Cause is dismissed. The landlord is granted an Order of Possession at the landlord's request.

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: October 10, 2013

Residential Tenancy Branch