Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

The landlords seek an order pursuant to subsection 49(1) of the *Manufactured Home Park Tenancy Act* (the "Act"). They also seek to recover the cost of the application filing fee pursuant to section 65 of the Act.

A dispute resolution hearing was held on November 29, 2022 and in attendance were one of the three landlords and the tenant. Also in attendance was the tenant's daughter.

It should be noted that the tenant's daughter is not listed as a tenant on the written tenancy agreement and as such cannot be a named party to this dispute. While the daughter may be a sub-tenant of the tenant, given that the tenant herself does not reside in the manufactured home, it is my finding that this type of application may only include the legally named tenant. As such, the name of the tenant's daughter has been removed from the style of cause that appears on the cover page of this Decision.

Issues

1. Are the landlords entitled to the order requested?
2. Are the landlords entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenant has resided until recently in the park for about four and a half years. A new tenancy agreement was drawn up in June 2022. A copy of the tenancy agreement was in evidence. Monthly pad rent is $431.43. Due to health issues, the tenant no longer lives in the home, but her daughter and granddaughter do.

On or about September 18, 2022, an individual showed up at the park around 4:30 AM and proceeded to throw rocks and bear spray. The individual ran a guest over. The guest was staying in the home. The landlord testified that it was an “altercation” between the individual and the tenant’s guest. The guest ended up in hospital.

The landlord submitted that the tenant or the tenant’s daughter permitted this individual—who is known to police—onto the park. The individual’s presence posed a risk to the park’s children and animals, and there is a safety concern. According to the landlord, who testified under oath, multiple other residents in the park are concerned. There are also complaints of bonfires going on when there shouldn’t be. The landlord added, in rebuttal, that there are word-of-mouth stories around the park of the person showing up to purchase or sell a stolen bike, and that there was drug use in the house.

The tenant testified under oath that the individual who showed up at 4:30 AM was not a guest of theirs and that this person was not invited. Neither the tenant nor her daughter or granddaughter (who is 20 years old) know this person or knew that they would show up. The tenant argued that her daughter’s and granddaughter’s safety was also put at risk. The tenant reiterated that they did not invite this person onto the park, the person is not a guest of theirs, they do not know him, and that the tenant has never met him. She has “no idea who this guy is.” Neither the tenant’s daughter nor granddaughter know him, either. Fortunately, the tenant added, the culprit has not returned to the park.

Analysis

The landlords’ application is being made under section 49 of the Act. Specifically, sections 49(1) and 49(2) of the Act read as follows:

> (1) A landlord may make an application for dispute resolution to request an order
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> > (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 40 *[landlord's notice: cause]*, and
> >
> > (b) granting the landlord an order of possession in respect of the manufactured home site.
>
> (2) The director may make an order specifying the date on which the tenancy ends and the effective date of the order of possession only if satisfied that

(a) the tenant or a person permitted in the manufactured home park by the tenant has done any of the following:

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park;
(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
(iii) put the landlord's property at significant risk;
(iv) engaged in illegal activity that

(A) has caused or is likely to cause damage to the landlord's property,
(B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the manufactured home park, or
(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the manufactured home park, and

(b) it would be unreasonable, or unfair to the landlord or other occupants of the manufactured home park, to wait for a notice to end the tenancy under section 40 *[landlord's notice: cause]* to take effect.

It is worth noting that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this dispute, I am not persuaded that the individual who showed up at 4:30 AM on September 18, 2022 was “a person permitted in the manufactured home park by the tenant.” Or, for that matter, the tenant’s daughter, or granddaughter permitted him to visit. While it is extremely unfortunate that the culprit decided to target the tenant’s home, there is no evidence to support a conclusion that the tenant, or the tenant’s tenant (that is, the daughter) somehow permitted the person into the park. The tenant testified under oath that neither they nor their daughter know this person.

And the landlords were unable to prove that the tenant or their daughter actually permitted this person onto the park. There is, I also note, insufficient evidence for me to make any finding as to whether the tenant's guest ("Matt") knew the person who showed up.

For this reason, I am unable to conclude that section 49(2)(a) of the Act has been established. Accordingly, I cannot grant an order under section 49 of the Act. The landlords' application is therefore dismissed without leave to reapply.

The claim to recover the application filing fee is dismissed

Conclusion

The application is hereby dismissed, without leave to reapply.

The tenancy continues until it is ended in accordance with the Act.

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: November 30, 2022

Residential Tenancy Branch