

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: AAT CNC FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy effective November 30, 2008 and an order that the landlord allow access to the site for the tenants. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

- Does the landlord have grounds to end this tenancy?
- Should the landlord be ordered to allow the tenants to access to the site?

Background and Evidence

The parties agreed that the tenants began their tenancy in 2006 when they took over title of the manufactured home from their son who had previously occupied the site for a number of years. The parties further agreed that the tenant's son had built an addition to the manufactured home in or about 2001. When the tenants began their tenancy in 2006, they signed a tenancy agreement with the owners which included the following term:

"The Tenant agrees not to make or permit any construction, alteration, additions or improvements to the pad without the prior written approval of the Landlord."

On or about October 22, 2008 the landlord served the tenants with a one-month notice to end tenancy for cause which alleges that the tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. It is this notice which the tenants seek to have set aside.

The landlord testified that the addition to the manufactured home which was built in

2001 was built in violation of the aforementioned term of the tenancy agreement and further alleged that the tenants had erected a carport frame which was a further violation of that term. The tenant acknowledged that they had built a frame over which they intended to drape a tarp which would serve as a carport. The tenant claimed that a similar structure had been used in the previous winter with no protest from the landlord. The landlord testified that the tenants had not erected such a structure in the past. The tenant testified that no written notice to remove either the addition or the carport frame had been given. The landlord presented no evidence showing that they had given a written request for the removal of either structure.

The parties agreed that underground septic tanks were partly on the manufactured home site and that the tanks were recently repaired. The landlord asked the tenants not to park on or drive near the tanks as this would cause damage. To comply with this request, the tenants would have to stop using their driveway as the driveway was either on or too close to the tanks. The tenants originally requested that the landlord be ordered to allow access to the site by making the driveway fully available for their use. However, although the tenants had been driving on or near the tanks through the normal use of their driveway, at the hearing the tenant agreed that in the future they would park at the end of their driveway and would instruct their guests to do the same.

Analysis

In order to be successful in establishing grounds to end the tenancy, the landlord must prove that the tenants have breached a material term of the tenancy and that the tenants did not comply with a written request to correct the breach. As the addition built by the previous tenant pre-dated the 2006 tenancy agreement and what the landlord claims to be a material term, I find that the existence of the addition cannot form the basis for a notice to end tenancy. As for the carport frame, I find that the landlord did not provide the tenants with a written demand that the structure be removed. As the tenants were not given an opportunity to correct the alleged breach as is required by the Act, I find that the notice to end tenancy cannot be supported.

As the tenant has agreed to not drive on or near the septic tanks, I find that the issue of whether the landlord is denying access to the manufactured home site has been

resolved and no further action is required with respect to that claim.

Conclusion

The notice to end tenancy is set aside. As a result, this tenancy will continue. The tenants are entitled to recover the \$50.00 paid to bring this application and may deduct this from future rent owed to the landlord.

Dated: November 20, 2008.