

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 82 of the *Act*, sent via registered mail on July 17, 2009. Mail receipt numbers were provided in the Tenant's verbal testimony. The Landlord confirmed receipt of the hearing package on July 20, 2009.

Both the Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to an Order to cancel a notice to end tenancy for cause and to recover the cost of the filing fee from the Landlord pursuant to sections 40 and 65 of the *Manufactured Home Park Tenancy Act*?

Background and Evidence

The tenancy began on October 6, 2006 with pad rental currently payable on the first of each month in the amount of \$262.00.

The Landlord (Park Manager) advised that she was hired on June 1, 2009 and that she was told by the owner of the Manufactured Home Park that the previous Park Managers were let go because they refused to deal with the Tenant.

The Landlord testified that since she has been working at the park she continues to receive complaints about the Tenant on a daily basis. The Landlord advised that the complaints are about issues that happened prior to the Landlord's employment and as far back as 2006. The Landlord stated that while most of the complaints come from the 2 immediate neighbours on either side of the Tenant, there have been about 8 other tenants who have mentioned issues involving the Tenant that happened several years ago.

The Landlord advised that she first went to the RCMP to inquire about any existing RCMP files against the Tenant and that while the RCMP could not tell the Landlord any specifics due to privacy laws the Landlord did acquire information about a police file that one of the other tenants had filed from a previous year.

The Tenant testified that he believes the complaints are fabrications and lies and that he is a quiet 70 year old Veteran who wants to live his remaining years in his home. The Tenant confirmed that he had an animal hanging in his carport, an animal that he acquired legally through hunting and that while it did bleed on his driveway he did clean it up and did not cause problems to any of the neighbours.

The Tenant also argued that concerns that the Landlord had made in her testimony were flawed or fabricated. The Tenant stated that he has never spit at the neighbours while standing on his deck, nor has he even taken his guns out on his deck, and that the neighbour who complained that the Tenant shovelled snow off of his carport roof onto the neighbours driveway was a lie as the neighbour does not have a driveway on that side of his trailer and that it is only 3 feet wide which is not wide enough to park a vehicle.

The Landlord stated that the neighbour stated that he allows guests to park vehicles on that side of the trailer but that it is not a formal driveway.

The Tenant argued that when he first met the new Landlord she told the Tenant that she had heard a lot about him and that the Tenant was labelled a complainer and a troublemaker.

The Landlord confirmed that she did have a similar conversation with the Tenant and that in her own experiences with the Tenant he has been very kind and pleasant.

The Tenant stated that his notice of claim, which he filed against the Park in Provincial Court, was received by the Owner of the park on Friday July 10, 2009 and on Monday July 13, 2009 the Landlord issued the Tenant the 1 Month Notice to End Tenancy for Cause.

The Landlord confirmed the receipt and service dates above. The Landlord stated that she served the Tenant personally with the notice to end tenancy on July 13, 2009 at the Tenant's residence.

The Landlord advised that she has never spoken directly to the Tenant about specific complaints she had received and that she has never issued any written notices to the Tenant about his behaviour. The Landlord could not advise whether the Tenant had been given warnings or notices previous to her employment although she did have a large file with complaints about the Tenant and from the Tenant.

Analysis

The Landlord has issued a 1 Month Notice to End Tenancy for reasons that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, and adversely affected the quiet enjoyment, security, or physical well-being of another occupant or the Landlord. The testimony and evidence before me supports that the previous landlords either refused to take action or stood idly by while tenants allegedly interfered with the quiet enjoyment of each other and that the complaints involve events which took place 2 and 3 years prior to the notice to end tenancy was issued.

I find that the contradictory testimony and evidence creates reasonable doubt as to why the notice to end tenancy was really issued. I do not think it is a coincidence that the notice to end tenancy was issued the first business day after the Owner/Landlord received notification of the Tenant's claim that he filed in Provincial Court against the Owner of the Manufactured Home Park.

Based on the aforementioned I find that the Landlord has failed to prove cause for issuing the 1 Month Notice to End Tenancy and I hereby approve the Tenant's application to have the notice cancelled.

As the Tenant has been successful with his application I find that he is entitled to recover the cost of the \$50.00 filing fee from the Landlord and I hereby instruct the Tenant to reduce his pad rent for August 1, 2009 by \$50.00.

Conclusion

I Hereby Order that the 1 Month Notice to End Tenancy, issued on July 13, 2009, is cancelled, and is of no force or effect.

I Hereby Order the Tenant to deduct \$50.00 from the monthly rent payable on August 1, 2009, to recover the filing fee, pursuant to Section 65 of the *Manufactured Home Park Tenancy Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

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Dated: July 23, 2009.

Dispute Resolution Officer