



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, MT, and FF

Introduction

This hearing was scheduled in response to an Application for Dispute Resolution, in which the Applicants applied to set aside a Notice to End Tenancy for Cause and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask questions, and to make submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the One Month Notice to End Tenancy for Cause, served pursuant to section 40 of the *Manufactured Home Park Tenancy Act (Act)* should be set aside; whether the Applicant should be granted more time to apply to set aside the Notice to End Tenancy for Cause; and whether the Applicant is entitled to compensation for the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Agent for the Landlord and the female Applicant agree that the female Applicant entered into a month to month tenancy for this rental unit on July 01, 2008 and that the male Applicant has occupied the rental unit since that time. The female Applicant stated that prior to the beginning of the tenancy she informed the Landlord that the male Applicant would be occupying the rental site. The Agent for the Landlord stated that the female Applicant indicated that the male Applicant would only be residing at the rental site for a short period of time.

The Agent for the Landlord stated that her mother personally served the male Applicant with a One Month Notice to End Tenancy for Cause on September 13, 2009. The female Applicant stated that she does not believe the male Applicant, who is her brother, received that Notice.

The Agent for the Landlord stated that a One Month Notice to End Tenancy for Cause was mailed to the female Applicant on September 13, 2009. The female Applicant

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stated that she was out of town and that she did not receive the Notice to End Tenancy until September 20, 2009.

Neither party submitted a copy of the One Month Notice to End Tenancy, although the Agent for the Landlord and the female Applicant agree that it is signed by an Agent for the Landlord; that it is dated September 13, 2009; that it declares the Applicants must vacate the rental unit on October 15, 2009; and that the reasons stated for the Notice to End Tenancy were that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord.

The Agent for the Landlord stated that they have received several verbal complaints from occupants of the site regarding the male Applicant, who has allegedly disturbed other occupants by banging on his walls and yelling. She stated that she believes her mother has spoken with the male Applicant about these disturbances but she could provide no details regarding the timing or the nature of those conversations. She stated that her mother also had one telephone conversation with the female Applicant in which she advised her of the disturbances and was subsequently advised to contact the police.

The Agent for the Landlord's mother, who is also an agent for the Landlord, submitted a letter, in which she declared that she telephoned the female Applicant last year to advise her of the disturbances. The female Applicant acknowledged having a telephone conversation with the Agent for the Landlord's mother, although she believes that occurred sometime early in 2009. The female Applicant stated that she discussed the Landlord's concerns with the male Applicant, who stated that he did not know that he was being loud enough to cause a disturbance.

The Agent for the Landlord and the female Applicant agree that the Landlord has not provide the Applicants with any written warning in relation to the noise disturbances.

The Landlord submitted a letter, dated October 01, 2009, from an occupant who resides beside the male Applicant, in which the author declared that the male Applicant frequently disturbs her by yelling in the middle of the night in a voice that is loud enough to awaken her family and cause her dogs to bark. She declared that he frequently makes loud scraping noises and plays his music loudly at "all hours of the night". She declared that her daughter, who is twelve, was recently frightened when the male Applicant caused a disturbance in the middle of the day.

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The Landlord submitted a letter, dated October 06, 2009, from an occupant who resides two trailers away from the male Applicant, in which the author declared that the male Applicant yells and bangs around his trailer “a couple of times per week”. She declared that he recently started to “rage” during the day, which is frightening for her children. She expressed concern that he is a danger to himself or others. The author of this letter also testified at the hearing, at which time she stated that the male Applicant bangs on the walls of his trailer and yells so loudly that she can hear him when she is inside her own trailer. She stated that she has called the police on one occasion, which attended and removed the male Applicant. She stated that she has expressed her concerns to an Agent for the Landlord, who is her mother-in-law, on many occasions, although she did not express her concerns in writing until October 06, 2009.

The female Applicant contends that the Applicants were not given sufficient notice of the Landlord’s concerns and that her family is now in the process of securing support for the male Applicant.

Analysis

I find that there is insufficient evidence to establish that the male Applicant was served with a One Month Notice to End Tenancy. In reaching this conclusion I was strongly influenced by the absence of evidence, either oral or written, from the person who allegedly served the Notice to End Tenancy and by the absence of evidence from the male Applicant that indicates he received it.

I accept that the Landlord mailed the Notice to End Tenancy to the female Applicant on September 13, 2009. Section 83 of the *Act* stipulates that a document that is served by mail is deemed received on the fifth day after it is mailed. In these circumstances, I find that the female Applicant is deemed to have received the One Month Notice to End Tenancy on September 18, 2008.

The Applicants filed an Application for Dispute Resolution on September 27, 2009, which is nine days after the female Applicant received the One Month Notice to End Tenancy. This Application for Dispute Resolution has been amended and corrected on more than one occasion since the original filing.

I find that the Applicants filed an Application for Dispute Resolution within the legislated time period after receiving the One Month Notice to End Tenancy and I find, therefore, that I do not need to consider the application for more time to apply to set aside the Notice to End Tenancy for Cause.

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While I accept that the male Applicant has disturbed others by yelling and making other noises while he was inside his home, I am not satisfied that the Landlord made sufficient efforts to clearly advise the Tenant that his behaviour was disturbing others. In reaching this conclusion I was strongly influenced by the absence of direct evidence that indicates that the male Applicant was verbally advised that he was disturbing others; by the fact that the female Applicant was only advised of the concern on one occasion sometime many months ago; and by the Agent for the Landlord's acknowledgement that neither Applicant was given written notice that the male Applicant was causing a disturbance or that the disturbances could lead to an end to the tenancy.

I find that the Landlord had an obligation to clearly advise the Applicants that the noise emanating from the male Applicant's residence was significantly disturbing other occupants. In these circumstances I find that the Applicants were denied the opportunity to remedy the situation as the Applicants were not, in my view, clearly advised of the Landlord's concerns.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that it has grounds to end this tenancy pursuant to section 40(1)(c)(i) or 40(1)(c)(ii) of the *Act*, I hereby set aside the One Month Notice to End Tenancy, dated September 13, 2008, and I order that this tenancy continue until it is ended in accordance with the *Act*.

I find, however, that the One Month Notice to End Tenancy serves as a written notification that the male Applicant is disturbing other occupants of the residential complex when he yells, bangs on his walls, and makes other noises while he is inside his residence. The Landlord retains the right to file another Notice To End Tenancy if the male Applicant continues to disturb others with this type of behaviour.

As I find the Applicants' application has merit, I hereby authorize the Applicants to deduct \$50.00 from the next rent payment, as compensation for the filing fee paid for this Application for Dispute Resolution.

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*.

Dated: November 12, 2009.
