

## **Decision**

**Dispute Codes:** MT, CNC, OPC, FF

### **Introduction**

This hearing dealt with an application from the tenant for more time to make an application to cancel a notice to end tenancy, cancellation of a 1 month notice to end tenancy for cause, and recovery of the filing fee. The landlord seeks an order of possession in the event the tenant's application fails. Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether either party is entitled to any or all of the above under the Act

### **Background and Evidence**

Pursuant to a written tenancy agreement, what is presently a month-to-month tenancy began approximately 12 years ago. Monthly rent for the manufactured home site is \$434.82, and is payable on the first day of each month.

The landlord issued a 1 month notice to end tenancy for cause dated October 1, 2009. The notice was served on the tenant by way of facsimile on October 16, 2009. A copy of the notice was submitted into evidence. Reasons shown on the notice for its issuance are as follows:

Tenant or a person permitted on the property by 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

Tenant has engaged in illegal activity that has, or is likely to:

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- jeopardize a lawful right or interest of another occupant or the landlord

Tenant has assigned or sublet the rental site without the landlord's written consent

In his application which was filed on October 19, 2009, the tenant confirms that he received the above notice on October 16, 2009.

As the landlord was uncertain whether the notice had been properly served by facsimile, erring on the side of caution, the landlord issued a second 1 month notice to end tenancy for cause dated October 24, 2009. The notice was served by posting on the tenant's door on that same date. Reasons shown on the notice for its issuance are identical to those set out on the first notice, as above. The tenant confirmed that he received the second notice on October 24, 2009.

Documentary evidence submitted by the landlord includes, but is not limited to, a petition bearing the signatures of other residents in the manufactured home park. By way of their signatures, other residents are presented as being in favour of the tenant's eviction from the manufactured home park. Reference is made in the petition to a conviction for which the tenant spent time in jail. There is also reference to the behavior of his dogs who allegedly "bark at all hours of the day & night," and a claim that the tenant "does not clean up after his dogs and leaves doggy doo on his lawn for weeks at a time."

Documentary evidence submitted by the tenant includes, but is not limited to, character references.

## **Analysis**

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with two separate 1 month notices to end tenancy for cause, the first dated October 1, 2009 and served on October 14, 2009 and the second dated October 24, 2009 and served on that same date. The tenant applied to dispute the first notice within 10 days following its receipt, which is within the time permitted by the Act. In the result, I find that the tenant is not required to apply for more time to make an application to cancel the landlord's 1 month notice to end tenancy for cause.

Section 40 of the Act addresses **Landlord's notice: cause**, and provides in part, as follows:

40(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(c) the tenant or a person permitted in the manufactured home park by the tenant has

(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, or...

(d) the tenant or a person permitted in the manufactured home park by the tenant has engaged in illegal activity that

(ii) 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

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(h) the tenant purports to assign the tenancy agreement or sublet the manufactured home site without first obtaining the landlord's written consent or an order of the director as required by section 28 *[assignment and subletting]*;

I have carefully considered the testimony and documentary evidence submitted by the parties. The weight I am able to give to the petition submitted by the landlord is limited. With the exception of the landlord's witness, none of the other residents who signed the petition were present at the hearing to testify. Further, the petition falls short of proving that those who signed the petition had a full understanding of the tenant's circumstances. For example, the incident which led to the tenant's imprisonment apparently occurred many years ago and prior to the commencement of this tenancy. There is no evidence before me of any illegal activity whatsoever on the part of the tenant during the term of his tenancy in the manufactured home park.

While the tenant acknowledges that he was not attentive to regularly cleaning up after his dogs before he retired, I find there is insufficient evidence that the tenant does not now clean up after his dogs in a timely fashion.

I find there is insufficient evidence that barking of the tenant's dogs infringes on the right to quiet enjoyment which is the right of all residents in the manufactured home park.

The evidence provided by the parties in regard to the matter of whether or not the tenant sublet his manufactured home without the landlord's consent, is inconsistent. In the result, in consideration of the broad circumstances I find there is insufficient evidence that grounds exist to support an end to tenancy on this basis.

In the circumstances of this dispute, concerns related to the tenant appear to arise from events that occurred some time ago. There is no persuasive evidence of current, frequent and ongoing behaviors on the part of the tenant and / or his dogs that are the cause of concern for other residents.

The onus of proof on an application is on the applicant, and the standard of proof is on the balance of probabilities. I find that the tenant has met the required standard of proof in establishing that insufficient cause has been shown to support the landlord's issuance of a notice to end tenancy. In other words, on a balance of probabilities, the landlord has failed to prove there is sufficient cause to support an application for an order of possession.

It is to be hoped that as a result of the tenant's application and exchanges between the parties during the hearing, there will be a heightened awareness and sensitivity of each party to the other's needs and concerns.

As the tenant has succeeded in his application to have the notice to end tenancy set aside, I find that he is entitled to recover the \$50.00 filing fee. The tenant may therefore withhold \$50.00 from the next regular payment of monthly rent.

Section 65 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the tenant's application for costs associated with representation at the hearing is dismissed.

For the information of the parties, attention is drawn to the provisions set out in section 22 of the Act, **Protection of tenant's right to quiet enjoyment**, as follows:

22 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 manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23 [*landlord's right to enter manufactured home site restricted*];

- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Finally, the attention of the parties is drawn to the provisions in section 26 of the Act, **Landlord and tenant obligations to repair and maintain**, which reads in part, as follows:

26(1) A landlord must

- (a) provide and maintain the manufactured home park in a reasonable state of repair, and
- (b) comply with housing, health and safety standards required by law.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas.

### **Conclusion**

The landlord's 1 month notice to end tenancy for cause is dismissed. The tenancy therefore continues in full force and effect.

Following from all of the above and pursuant to section 65 of the Act, I order that the tenant may withhold **\$50.00** from the next regular payment of monthly rent.

DATE: December 11, 2009

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Dispute Resolution Officer