Dispute Codes:

CNC, MNDC, FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has applied to set aside a Notice to End Tenancy for Cause, a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to return personal property, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution. At the hearing the Tenant advised that the vehicle that is the subject of this dispute has been returned to him, so his application for an Order requiring the Landlord to return personal property has been withdrawn.

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 relevant questions, and to make relevant submissions.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy, served pursuant to section 40 of the *Manufactured Home Park Tenancy Act (Act)*, should be set aside; whether the Tenant is entitled to recover the costs of having his vehicle towed; and whether the Tenant is entitled to recover the filing fee for this Application for Dispute Resolution from the Landlord.

Evidence and Background

The Landlords and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the Tenant, a copy of which was not submitted in evidence by either party. The parties agree that the Notice was served on the Tenant on January 14, 2009, and that the Notice directed the Tenant to vacate the rental unit on February 15, 2009. Residential Tenancy Branch records show that the Tenant filed an Application for Dispute Resolution on January 13, 2009, in which he applied for the return of his personal property. The records show that the Tenant amended his application on January 15, 2009 to include an application to cancel the Notice to End Tenancy.

The Landlord and the Tenant agree that the only reason for ending the tenancy stated on the Notice to End Tenancy was that the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time after written notice to do so.

The Landlords and the Tenant agree that the Landlords had a red Aerostar van, which was in the care of the Tenant, towed from the manufactured home park on January 09, 2009. The Tenant is seeking compensation, in the amount of $313.78, for the cost of recovering the vehicle from the tow company. Receipts were submitted to show that the Tenant incurred costs in that amount. The Tenant is also seeking compensation, in the amount of $100.00, for taxi expenses he incurred while attempting to resolve this dispute. He did not submit receipts to establish that he incurred expenses in this amount.

The Landlords presented the following evidence and arguments that are relevant to this dispute:

- A copy of the park rules which show that unlicensed vehicles are not allowed to be stored on the site and that the management has the right to tow them at the expense of tenants
- A copy of a letter, dated January 24, 2008, advising the Tenant to license and insure two vehicles, neither of which is the vehicle that is the subject of this dispute
- A copy of a letter, dated May 01, 2008, noting that the Tenant has an uninsured vehicle on site and reminding him that they are prohibited
- A copy of a letter, dated January 14, 2009, in which the Landlords explain why the Tenant's vehicle was towed on January 09, 2009 and explains why they are seeking to end the tenancy
- The Landlords stated that the vehicle brought a vehicle into the manufactured home park on, or about, December 12, 2008, which they believed was not insured because it did not have a valid license plate affixed
- The Landlords stated that the Tenant was verbally advised that he was not permitted to keep the uninsured vehicle (a red Aerostar van) on the property on December 12, 2008, at which time the Tenant did not advise them that the vehicle was licensed. The Landlords acknowledge that the female Landlord was angry during this conversation.
- The Landlords stated that they verbally advised the Tenant again on December 24, 2008 that he could not keep the uninsured van in the manufactured home park, at which time he did not advise them that the vehicle was insured
- The Landlords stated that they verbally advised the Tenant a third time that he could not keep the uninsured van in the manufactured home park on January 07, 2009, at which time he did not advise them that the vehicle was insured

- The Landlords stated that they made arrangements to have the van towed on January 09, 2009, at which time the Tenant became very angry but still did not advise them that the vehicle was insured
- The Landlords acknowledged that they did not provide the Tenant with written notification to remove the uninsured van.

The Tenant and his advocate presented the following evidence and arguments that are relevant to this dispute:

- The Tenant stated that the Aerostar van was owned by a friend
- The Tenant stated that the rear plate had been torn off the van prior to December 12, 2008 and was at his place of employment
- The Tenant stated that the he was not working during December due to an injury so he was unable to retrieve the license plates for the van
- The Tenant stated that the insurance documents were in the van
- The Tenant stated that he did not advise the Landlords that the van was insured when they met on December 12, 2008, December 24, 2008, or January 07, 2008 because the female Landlord is very confrontational
- The Tenant stated that he did tell the Landlords that the van was insured when it was being towed on January 09, 2009 and he was not allowed to access the van to produce the insurance papers
- The Tenant stated that he never received written notification to remove or insure the van
- A copy of insurance that shows the van was insured on January 09, 2009
- A copy of minutes from a park meeting on January 27, 2007, which indicate that occupants with uninsured vehicles in the park will be given thirty days to comply with rules
- The Landlord did not give the Tenant thirty days to comply with park rules.

The Advocate for the Tenant contends that the park rule regarding unlicensed vehicles has not been equitably applied, as some Tenants still have unlicensed vehicles in the manufactured home park. She specifically noted that a Dodge Van has been on the property without insurance since October of 2008 and an uninsured Toyota truck has been on the property since May of 2008.

The Landlords argued that they have been making a concerted effort to have occupants remove their uninsured vehicles from the manufactured home park. They provided a list of 22 tenants that have been asked to remove or insure uninsured vehicles. They indicate that all of the tenants have now complied with the park rules, although they admit that the two vehicles mentioned by the Advocate for the Tenant did not comply until January 9, 2000 and January 10, 2009.

Analysis

The evidence shows that the park rules prohibit Tenants from parking uninsured vehicles in the manufactured home park. The evidence also shows that the Tenant was aware that uninsured vehicles were not permitted in the manufactured home park. The evidence also shows that the Tenant parked a red Aerostar van, which was missing the rear license plate, in the manufactured home park on, or about, December 12, 2008.

After considering all of the evidence, I find that the Landlords had reasonable grounds to believe that the Tenant was breaching the park rule regarding uninsured vehicles, vehicles. In reaching this conclusion I was strongly influenced by the fact that the red Aerostar van did not display current license plates and by the fact that the Tenant did not produce evidence to show that the van was licensed, even though he had ample opportunity to produce that evidence.

I do not accept the Tenant's argument that he did not disclose that the vehicle was insured prior to January 09, 2009 because of the confrontational nature of the female Landlord. I find that the Tenant had a responsibility to show that he was complying with the park rules, particularly when he has parked a vehicle in the manufactured home park that is not displaying valid license plates. In this particular case the Landlords had spoken with the Tenant on three separate occasions, so he was clearly aware of their concern about the van. I find that he should have made reasonable efforts to demonstrate that the van was insured. In the event that the Tenant did not wish to communicate personally with the Landlord, he could have communicated through a third party, in writing or by telephone.

Section 7(2) of the *Act* stipulates, in part, that a tenant who claims compensation for damage or loss that results from the landlord's non-compliance with the Act, the regulations, or the tenancy agreement must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the van would not have been towed if the Tenant had made a reasonable effort to inform the Landlords that the van was insured. As the Tenants did not make a reasonable effort to prevent the van from being towed, I find that he is not entitled to compensation for any expenses related to the towing. On this basis, I dismiss the Tenant's application for a monetary Order for compensation for damage or loss.

In considering this matter, I have disregarded the Tenant's argument that he was not given thirty days to comply with the rules. I disregarded this argument primarily because the park rules do not indicate that Tenants will be given thirty days to comply with the rules. Rather, I find that the thirty day grace period was notification of the Landlord's intent to enforce the rules in January of 2007. I find that there was insufficient evidence to show that the park rules were amended to include a thirty day grace period at the meeting in January of 2007.

In considering this matter, I have also disregarded the Tenant's argument that this particular park rule has not been equitably applied. In reaching this conclusion I was strongly influenced by the Landlord's testimony that numerous other tenants have been directed to comply with the rule and that all of them have now complied. Although the evidence shows that the tenants complied at different times, there is no evidence that the Landlords were permitting some tenants to contravene the rules indefinitely.

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has provided insufficient evidence to show that the Tenant failed to correct a material breach of the tenancy agreement after receiving written notice to correct that breach. In reaching this conclusion I was largely influenced by the fact that the Landlord did not give the Tenant written notice that he needed to insure or remove the Aerostar van. As receiving written notice of a breach is an integral part of ending a tenancy under section 40(1)(g) of the Act, I find that the Landlords have not established that they have cause to end this tenancy pursuant to this section.

Although the Tenant has been given written notice of previous violations regarding uninsured vehicles, I find that those notices do not relate to this specific breach and I do not find those notices sufficient for the purposes of section 40(1)(g) of the Act. In reaching this conclusion I specifically note that the Tenant has not been advised that future breaches of this specific park rule may be cause to end the tenancy.

As the Notice to End Tenancy does not indicate that the Landlords are attempting to end the tenancy because the Tenant has interfered with or significantly disturbed the quiet enjoyment of other occupants of the landlord, I have not considered any evidence that relates to that issue.

Conclusion

As I have determined that the Landlords have submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 40(1)(g) of the Act, I hereby set aside the One Month Notice to End Tenancy for Cause and I order that this tenancy continue until it is ended in accordance with the *Act.*

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

Date of Decision: February 17, 2009