



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC

Introduction

This hearing was held in response to the tenant's Application requesting a Notice to End Tenancy for Cause be cancelled.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions to me.

Preliminary Matter

The 53 page evidence submission made by the tenant was received late by the Residential Tenancy Branch and the landlord. The tenant was at liberty to provide oral testimony and to read from any of the documents contained in their late evidence submission.

The landlord's witness did not provide any testimony.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on January 19, 2010, under the Manufactured Home Park Tenancy Act be cancelled?

Background and Evidence

The tenants acknowledge receipt of a 1 Month Notice to End Tenancy which was posted to their door. The tenants applied to dispute this Notice within the required time-frame.

The following facts were established during the hearing:

- The manufactured home has been on the site for 8 – 10 years;
- The current occupants moved in 3 years ago;

- The manufactured home is owned by a third party who receives monthly payments from the current occupants;
- The current occupants pay the monthly site rental directly to the park manager on behalf of the manufactured home owner;
- The current occupants have a rent-to-own agreement with the manufactured home owner, who is their landlord;
- That the occupants of the manufactured home do not own the home.

On October 30, 2009 the male occupant named as a tenant on this Application signed a manufactured home site tenancy agreement with the park manager. The tenant testified that he signed that tenancy agreement knowing it would be unenforceable as he is not the owner of the manufactured home. The tenant referenced the clause in the October 30, 2009, site rental agreement, clause 10(i), which states: "that at all times at least one of the persons listed as a "Tenant" on the Tenancy agreement must be the legal registered owner of the home which occupies the Site."

The tenant pointed to a letter dated January 27, 2009, sent by the park manager to the individual identified as the home owner, in which the park manager references the occupants as tenants of the home owner. The tenant stated that as recently as the day prior to this hearing he spoke with the landlord who confirmed their relationship as one of landlord and tenant.

The landlord submitted that the current occupants and the manufactured home owner are all tenants. The landlord stated that there are no written records upon which he can rely and that he has issued 1 Month Notice to End Tenancy for Cause to the occupants and the home owner. The landlord confirmed that in January 2010, he confirmed that the current occupants of the home do not own the home.

Analysis – Status of the Tenancy

I have not considered the merits of the 1 Month Notice to End Tenancy for Cause which was issued on January 19, 2010. During the hearing the parties were told I would reserve my decision and that the hearing would be reconvened if I found that the tenant named on the Application was in fact a tenant under the Manufactured Home Park Tenancy Act.

After considering all of the written and oral evidence submitted at this hearing, I find that the tenant named on the Application is not a tenant of the manufactured home park, but is a tenant of the manufactured home owner. Section 4 of the Act determines that when a tenancy agreement under which a home site and a manufactured home are both rented to the same tenant, the Act does not apply. Therefore, as the tenant is making monthly payments to the home owner for the right to live on the site and in the home, I find that the tenant named in the Application is not a tenant of the manufactured home park.

I also base this decision upon the testimony of the landlord who confirmed that the individual named on the January 19, 2010, Notice to end tenancy are not the owners of the home. There is no evidence before me that the home owner assigned his interest in the home to the current tenants or assigned the landlord as his agent. I also base this decision on the tenant's testimony that as recently as yesterday he spoke with the home owner who confirmed that he continued to be their landlord.

I make no finding in relation to the status of the relationship between the current tenants and their landlord; other than to confirm that the manager of the manufactured home park is not the tenant's landlord. I also base this decision upon the written tenancy agreement signed on October 30, 2009, which contains a term outlining a requirement that at all times at least one of the home owners must reside in the home. The owner of the home does not reside in the home. The agreement signed by the tenant on October 30, 2009 has been signed by a person who is not the owner of the home and there is no evidence before me showing that the tenant was authorized to sign the agreement on behalf of the home owner.

I have not made a finding in relation to the terms of any tenancy agreement that the home owner may have with the park.

I find that the tenant pays the monthly site rental to the park manager, on behalf of the home owner. I base this decision upon the testimony of the tenant and the lack of any evidence to the contrary. I also find that the tenant pays a form of rent or purchase payment directly to the owner of the home.

Therefore; I find that the 1 Month Notice to End Tenancy for Cause issued on January 19, 2010, under the Manufactured Home Park Tenancy Act is of no force or effect as it names a tenant who is not a tenant of the park, but of the manufactured home owner.

Conclusion

As I have determined that the landlord has submitted insufficient evidence to establish that the party named on the Notice is a tenant of the manufactured home park, I find that the 1 Month Notice to End Tenancy for Cause issued January 19, 2010, is of no force or effect.

The landlord is at liberty to take whatever action he feels is necessary under 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 *Manufactured Home Park Tenancy Act*.

Dated: March 16, 2010.

Dispute Resolution Officer