



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC

MNDC

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for an order to cancel the Notice to End Tenancy for Cause dated January 19, 2010, an order granting the tenant possession, a monetary order for compensation for loss of quiet enjoyment and interference by the landlord and reimbursement for the filing fee.

Both parties appeared and gave testimony as did several witnesses.

Issue(s) to be Decided

The tenant was seeking to cancel a One-Month Notice and a monetary order.

The issues to be determined based on the testimony and the evidence are:

- Whether or not the landlord was able to prove that the One-Month Notice to End Tenancy for Cause was justified and supported under the Act, failing which the notice should be cancelled as requested by the tenant.
- Whether or not the tenant was entitled to monetary compensation for loss of quiet enjoyment and harassment by the landlord.

Background and Evidence

A significant amount of data and written testimony was submitted into evidence, only a portion of which was relevant to the application before me. All of the relevant testimony and evidence was considered.

The tenancy began in 1996 and the current pad rent was \$182.50. The landlord testified that the One-Month Notice to End Tenancy for Cause dated January 19, 2010 with effective date of February 28, 2010 was issued based on several incidents in which the tenant had allegedly significantly interfered with or unreasonably disturbed the landlord or others. The landlord submitted written testimony regarding each incident that occurred on May 28, 2009, August 1, 2009, August 19, 2009 and a written complaint dated January 8, 2010 discussing several concerns about the tenant's conduct during a period of several months in 2009. The complaints and accusations alleged conduct by the tenant ranging from the tenant purposely bothering the landlord, interfering with work on the premises being done by the landlord and his maintenance staff, purportedly yelling and swearing at people, being intoxicated, allegedly assaulting another resident and generally being a nuisance. The landlord acknowledged that after this alleged conduct occurred, no warning letters had ever been issued to the tenant cautioning that the conduct in question was not going to be tolerated and would jeopardize the tenancy. The landlord stated that he had also received numerous requests from other residents in the park that the tenant be evicted.

The tenant denied all of the alleged offensive conduct and produced several witnesses to testify in the tenant's favour, and referred to written statements that directly contradicted the landlord's evidence and testimony. The tenant testified that some of the incidents and conduct that the landlord had attributed to the tenant actually involved conflicts between the landlord and other residents, some of whom appeared at the hearing and testified to this fact in support of the tenant. The tenant stated that the landlord was the instigator of numerous conflict situations and that it was the landlord who used abusive language and interfered

with the tenant and others. The tenant acknowledged that they hoped to end this long term tenancy as soon as it was possible to do so. However, according to the tenant, they had done nothing to warrant the One-Month Notice for Cause. The tenant testified that the landlord had issued the eviction in reprisal against the tenant because of previous successful dispute resolution hearings that had ruled in favour of the tenant. The tenant also submitted written and verbal testimonials about the tenant's upstanding character and neighbourly conduct as a resident in the park.

In regards to the tenant's claim for monetary compensation, the tenant gave several examples of the landlord coming on to the tenant's property without notice and interfering with the tenant's use and quiet enjoyment of the rental pad. The tenant testified that on one occasion the landlord appeared at their door and wrongfully accused the tenant of removing some park property that had been installed by the landlord. The tenant testified that this was done without any advance notice and that during this exchange the landlord was rude, confrontational and refused to leave after being asked repeatedly to do so. The tenant testified that, on another occasion, the landlord had been discovered skulking around the tenant's rear window. The tenant stated that unannounced intrusions by the landlord have been occurring approximately once every two months, but are very upsetting as the tenant is fearful of the landlord. The tenant testified that the landlord had also impeded access to the tenant's driveway and had taken every opportunity to malign and verbally harass the tenant. The tenant had submitted into evidence a written medical report attesting to the effect that the stress caused by the landlord, was having on the tenant's health. The tenant testified that this conduct was in breach of the Act and had devalued the tenancy over the past three years during which the tenant was forced into arbitration several times. The tenant stated that, although compensation of \$25,000.00 was requested in the application, it was difficult to put a monetary value on the loss of peaceful enjoyment which was a tenant's right.

The landlord disputed all of the tenant's testimony with the exception of the two incidents where the landlord felt it necessary to be on the tenant's property. The landlord acknowledged that no prior written notification was given. The landlord admitted that he had knocked on the tenant's door to follow-up on information he had received alleging that the tenant had removed reflectors installed beside the driveway. The landlord stated that this was a business issue and was not aimed to harass. The landlord also admitted that he had been looking for underground leaks following piping throughout the park and this took him onto the tenant's lot. According to the landlord this was pursued in the interest of the tenant and the rest of the residents.

The landlord stated that the tenant had pursued legal action against him to restrict contact. The landlord did not agree to any compensation to the tenant for the loss of quiet enjoyment. The landlord stated that if the tenant agreed to move, an amount equivalent to 12 months pad fees would be paid to the tenant.

Analysis: Notice to End Tenancy

Based on the verbal and written testimony, I find that there were some conflicts that arose, but it was not clear precisely what the tenant's role was. All of the landlord's testimony was challenged by the tenant. Moreover, the complainants who had submitted their written testimony were not available to be cross-examined. I find that if the incidents attributed to the tenant had transpired as described, particularly the alleged assault, then it would be likely be found that the tenant had significantly disturbed the landlord and other residents and the One-Month Notice would be enforced to end this tenancy.

However, the burden of proof was on the landlord to verify that the events unfolded as verbally described in the landlord's testimony and as written by others. It is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other

words, the landlord has the onus of proving during these proceedings, that the Notice to end Tenancy was justified under the Act.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, or written testimony, one statement may ultimately function to cancel the other. In the absence of independent documentary evidence, then the party who bears the burden of proof is not likely to prevail.

In this instance I find that the parties were completely at odds with one another's facts without much agreement as to what happened and why. Nonetheless, I find it is not necessary to determine which side is more credible or which set of "facts" is more believable. The reason that this is so is because the party seeking to end the tenancy, that being the landlord, has not succeeded in sufficiently proving on a balance of probabilities that the criteria under section 40 of the Act was satisfied.

I also find that the landlord did not take reasonable steps to ensure that the tenant was made aware of the nature of complaints that arose over several months nor that the tenant was adequately warned that the continuation of this tenancy would be in jeopardy if the conduct continued.

Given the above, I find that the One-Month Notice to End Tenancy for Cause must be cancelled .

Analysis: Monetary Compensation

In regards to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 60 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant made a reasonable attempt to mitigate the damage or losses that were incurred

Section 22 of the Act protects a tenant's right to quiet enjoyment and states that 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.

Section 23 of the Act states that a landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless one of the following applies: (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry; (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information: (i) the purpose for entering, which must be reasonable; (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

However, the 24-hour written notice is not required if: c) the landlord has an order of the director authorizing the entry; (d) the tenant has abandoned the site; (e) an emergency exists and the entry is necessary to protect life or property and (f) the entry is for the purpose of collecting rent or giving or serving a document that under this Act must be given or served.

Based on the testimony, I find that there were times when the landlord was not in compliance with the Act, and I find that the tenant did suffer some loss that would warrants recognition. I find that a retro-active rent abatement for in the amount of 5% for the past 12 months is warranted totaling \$109.50.

In addition to the above, I find that, in future, the landlord must provide the required 24 hours written notification in compliance with section 23, of the Act any time that the landlord needs to come on to the site. I further find that, in order to avoid escalating conflict, all communications between these two parties is required to be forwarded in writing and that, whenever possible, all verbal communications between the parties should cease.

I find that the tenant has established a total monetary claim of \$159.50 comprised of \$109.50 for loss of quiet enjoyment and the \$50.00 fee paid by the tenant for this application.

Conclusion

I order that the One-Month Notice to End Tenancy for Cause, dated January 19, 2010, is hereby permanently cancelled and of no force nor effect.

I hereby grant the tenant monetary compensation in the amount of \$159.50. This will be satisfied through a one-time rent abatement of \$159.50 which the tenant may deduct off of the next rental payment owed to the landlord.

I hereby Order that the parties shall endeavour to only communicate in writing and that the landlord is not to enter the premises except in accordance with section 23 of the Act that requires 24 hours written notice in advance.

March 2010

Date of Decision

Dispute Resolution Officer