



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, MNDC, OPT, AAT

Introduction

This hearing was held in response to the tenant's Application requesting a Notice to End Tenancy for Cause be cancelled, a monetary claim for compensation for damage or loss, an Order of possession for the tenant and that access be allowed to the rental unit to the tenant and her guests.

The tenant provide affirmed testimony that on February 18, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the landlord via registered mail at the address noted on the Application. A Canada Post tracking number and copy of the receipt was provided as evidence of service. The tenant stated that the envelope was returned marked by Canada Post, as having been refused by the recipient.

The tenant provided Canada Post receipts and tracking numbers for evidence and documents sent to the same service address that had been obtained from the 1 Month Notice to End Tenancy issued by the landlord; all of the evidence was returned as refused by the recipient.

The registered mail was sent to the landlord's address, but did not include the unit number. The tenant testified that her home is on the landlord's property and that she resides in unit #2 and the landlord lives in unit #1. No other homes are on the site. Therefore, as provided by section 71 of the Act, I find that the landlord has been sufficiently served with notice of this hearing and the evidence submitted by the tenant.

Preliminary Matter

During the hearing the tenant withdrew the portion of her Application requesting monetary compensation.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on February 9, 2010, be cancelled?

Is the tenant entitled to an Order of possession for her home?

Should an Order be made in relation to access to the rental pad by the tenant and her guests?

Background and Evidence

This month-to-month tenancy commenced on July 20, 2008. The manufactured home pad rental is \$300.00 per month, due on the first day of the month. The tenant owns her home which is situated on private property. The tenancy is in dispute as the tenant alleges the water supply was cut off on February 24, 2010. The tenant is currently attending at her home every few days in order to check on her belongings, but is not currently living in her home.

On February 15, 2010 the tenant was personally served by the landlord's son with a copy of a 1 Month Notice to end Tenancy for Cause. The Notice was submitted as evidence and is dated February 9, 2010, with an effective vacancy date of February 9, 2010. The tenant applied for dispute resolution within the required time-frame.

The tenant has disputed the reasons for cause given, that she is repeatedly late paying rent, that she significantly disturbed others and engaged in illegal activities that have affected the quiet enjoyment, security, safety or physical well-being of others.

The landlord did not submit any evidence or attend this hearing to provide testimony in support of the Notice served to the tenant.

The tenant would like assurance that she and her guests have access to the rental property. The tenant has not abandoned her property and currently wishes to continue the tenancy.

The tenant acknowledged her intention to pay rent, as required by the tenancy agreement.

Analysis

As the landlord failed to attend this hearing, despite having been sufficiently served with Notice of this hearing, I find that the 1 Month Notice to End Tenancy for Cause issued

on February 9, 2010 is of no force or effect and that the tenancy will continue until it is ended as required by the Act.

The tenant will continue to pay rent and is at liberty to end this month-to-month tenancy as required by the Act. The tenant does not require an Order of possession, as she owns the home and the tenancy has not been ended. Therefore, any attempt to thwart the tenant's access to her home, or access by her guests to the home, could be determined as a breach of the Act. A tenant is entitled to quiet enjoyment of her site and home, as provided by section 22 of the Act.

The tenant has not abandoned her property or the site. Therefore, the landlord's access to the manufactured home site is restricted, as provided by section 23 of the Act:

23 *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;

(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;

(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.

Conclusion

As the landlord failed to attend this hearing in support of the reasons contained in the 1 Month Notice to End tenancy for Cause issued on February 9, 2010, I find that the Notice

is cancelled and of no force or effect. I hereby set aside the One Month Notice to End Tenancy, dated February 9, 2010, and I order that this tenancy continue until it is ended in accordance with the Act.

The tenant is entitled to quiet enjoyment of her home and site and the landlord's access to the site must adhere to section 23 of the Act.

The tenant does not require an Order of possession as she has legal possession of the home and site.

The tenant has withdrawn her monetary claim and is at liberty to make a future 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 *Manufactured Home Park Tenancy Act*.

Dated: April 08, 2010.

Dispute Resolution Officer