

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for cause. Both parties appeared at the hearing and were provided the opportunity to be heard. I determined the landlord had submitted late evidence; however, the tenant confirmed she had an opportunity to read the evidence and was prepared to proceed with the hearing.

Issues(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Can the parties reach a mutual agreement in order to continue the tenancy?

Background and Evidence

The parties provided undisputed evidence as follows. The tenant has been residing at the rental site for approximately 20 years. The tenant currently pays rent of \$290.00 on the 1st day of every month. One of the tenant's sons has resided at the rental site since 2003 and the tenant's other son began residing at the rental site approximately one year ago. On February 24, 2009 the tenant signed a "Tenancy Agreement Addendum for Crime Free Housing." On April 28, 2010 the landlord issued a *1 Month Notice to End Tenancy for Cause* (the Notice) with an effective date of May 31, 2010. The Notice was personally served upon the tenant on April 28, 2010 and indicates the reasons for ending the tenancy are that the:

- 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
- put the landlord's property at significant risk

The landlord described how the manufactured home park is a family park that includes young children to seniors. The landlord testified that he has received numerous verbal complaints and two written complaints from other tenants about frequent coming and going to the rental site and that the tenant's sons are dealing drugs at the park entrance. The tenant's sons also walk through the park under the influence of drugs. The landlord also stated that the police have staked out the property and are aware of illegal activity by the tenant's sons. In addition, the landlord witnessed a guest of the rental site drive over septic field to access the park.

The landlord submitted that the manager has had verbal discussions with the tenant about the traffic coming and going from the site and so has a neighbour. The landlord provided the written complaints as evidence for the hearing as well as a copy of the addendum for crime free housing.

In response to the landlord's position, the tenant submitted that her sons meet a person at the park entrance to make car payments to that person whenever they get paid, approximately once or twice a week. In addition, there is no phone at the rental site and her sons leave the property to use the phone. The tenant acknowledged that her sons smoke marijuana but denied that they sell drugs. The tenant agreed the manager had spoken to her once but that it was about her broken down car. The tenant agreed she had spoken with a neighbour who advised that the tenant's sons should move out because they were being loud outside of the manufactured home late at night. The tenant denied it was their guest that drove over the septic field. Further, the tenant was of the position that other tenants of the park deal drugs and have created more noise than her site.

One of the complaint letters was reviewed with the tenant during the hearing. The complaint letter describes numerous exchanges seen at the park entrance. In addition, the complainant describes how the tenant's car was in and out of the park five times between 8:00 p.m. and 10:45 p.m. on April 24, 2010 or short durations. The tenant explained that she and/or her sons use her car but the tenant claimed she specifically recalled that evening as it was a Saturday night. The tenant testified that she had called her sons twice to come to the bar she was patronizing – once to bring her food and the second time to respond to a fight. On a third occasion her sons joined her at the bar for a few drinks. There was no explanation for the two other sighting of the tenant's car coming and going from the park during that time period.

Upon hearing from both parties, outlining the rights and obligations of the landlord and tenant, and the dispute resolution process, I provided the parties an opportunity to discuss a mutual agreement in an effort to explore the possibility of continuing with this long term tenancy. Both parties were agreeable to the following terms:

1. The tenancy would continue provided the tenant's sons vacate the rental site on or before July 31, 2010.
2. In the event both sons do not vacate the rental unit by July 31, 2010 the landlord may serve an Order of Possession upon the tenant.

The landlord expressed concern that the tenants may visit their mother for up to two weeks per year under the terms of the tenancy agreement and that disruptive behaviour would continue. The landlord sought a remedy that would restrict the tenant from having her sons visit for long periods of time.

Analysis

As explained to the tenant during the hearing, a landlord has the legal obligation to ensure the quiet enjoyment of other tenants is protected. A breach of quiet enjoyment

includes significant interference and unreasonable disturbance by another tenant or person permitted on the property by the tenant. Where a tenant is responsible for violating the covenant of quiet enjoyment of other tenants, the landlord is in a position to end the tenancy by issuing a 1 Month Notice to End Tenancy for cause to that tenant.

The landlord has the burden to prove a tenancy should end for the reasons stated on the Notice to End Tenancy. The burden of proof is based on the balance of probabilities, meaning one version of events is more likely than the other version provided by the other party. Upon hearing from the parties, I found the tenant provided unlikely explanations with respect to the frequent exchanges seen at the park entrance and the frequent coming and goings from the park. Therefore, I accept that the tenant's sons are involved in illegal activity and that such activity is significantly interfering with and unreasonably disturbance other tenants of the park.

As I have found the source of the illegal activity is tied to the tenant's sons and the tenant has been a long time tenant, I find that the tenancy may continue and the quiet enjoyment of the other tenants may be restored by having the tenant's sons vacate the rental site. Therefore, I provide the landlord with a conditional Order of Possession to be effective July 31, 2010. The tenant must vacate the rental site and the landlord may enforce the Order of Possession if the tenant's sons do not vacate the rental site by July 31, 2010. The Order of Possession will be void and the tenancy will continue if the tenant's sons vacate by July 31, 2010.

In the event the tenant's sons vacate the rental site and the tenancy continues after July 31, 2010, I have determined that long visits by the tenant's sons have significant potential to result in further disturbance of other tenants and the landlord. Therefore, by

the authority afforded me under the Act, I further Order that the sons may not have overnight visits at the rental site and that the tenant must ensure that her sons leave the park by 11:00 p.m. after July 31, 2010. Breach of this Order would be grounds for the

landlord to issue a 1 Month Notice to End Tenancy for Cause for failure to comply with an Order of a Dispute Resolution Officer.

By way of this decision, the tenant is also informed that a tenant is responsible for the actions of their guests and visitors. Thus, the landlord will have cause to end a tenancy where a tenant's guest or visitor significantly interferes with or unreasonably disturb other tenants or the landlord, jeopardizes the health or safety of other tenants, significantly damages the landlord's property or conducts illegal activities.

Conclusion

The tenancy will end July 31, 2010 and the landlord may enforce the Order of Possession unless the tenant's sons vacate the rental site by July 31, 2010. The tenancy shall continue if the tenant's sons vacate the rental site by July 31, 2010. If the tenancy continues after July 31, 2010 the tenant's sons will not be permitted overnight visitations at the rental site and must leave the park by 11:00 p.m.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 22, 2010.

Dispute Resolution Officer