

DECISION

Dispute Codes CNC, RP, FF, O

Introduction

This is the Tenant's application to cancel a Notice to End Tenancy for Cause; for an Order that the Landlord make repairs to the rental unit; and to recover the cost of the filing fee from the Landlord.

Both parties gave affirmed evidence at the Hearing.

Preliminary Issues

The Tenant CE applied under the *Manufactured Home Park Tenancy Act*. It was established at the Hearing, that the rental unit is a manufactured home, owned by the Landlord, situated on a large parcel of land. Therefore, the Tenant's application is under the *Residential Tenancy Act* (the "Act") and, pursuant the provisions of Section 64(3) of the Act, I amended the Tenant's application to reflect that fact.

During the course of the Hearing, it was determined that there were two Tenants under the tenancy agreement. The other Tenant, GS, was added to the Tenant's application with the consent of both parties.

During the course of the Hearing, the Landlord consented to cancel the Notice to End Tenancy for Cause, issued April 30, 2010. Therefore the Notice to End Tenancy for Cause is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

Issues(s) to be Decided

What area around the rental unit is considered rental property (the "yard") and for the sole use and enjoyment of the Tenant?

Who is responsible for maintaining the yard and the furnace filters?

Background and Evidence

During the Hearing, both parties requested that I determine which party was responsible for maintaining the area around the rental unit, and how much of the area around the rental unit is considered rental property. In addition, the parties requested I determine which party was responsible for maintaining the furnace filter at the rental unit.

The Landlord stated that the Tenant should maintain an area 90 feet by 100 feet around the rental unit. The Landlord testified that at the beginning of the tenancy, he told the

Tenant he would clear the area once, and thereafter it was her responsibility to clear the area around the rental unit.

The Tenant stated that the Landlord should maintain all of the yard maintenance. She stated that the Landlord's father and brother had cleared the area around the rental unit three times until the property was taken off the market.

The Landlord testified that the furnace filter was 'cleanable' and that the Tenant had agreed she would be responsible for cleaning it on a regular basis. The Tenant disputed that she had agreed to do so.

Analysis

Section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The Residential Tenancy Policy Guidelines, Guideline 1, clarifies responsibilities of landlords and tenants regarding maintenance, cleaning and repairs of residential property, and obligations with respect to services and facilities. A copy of Guideline 1 accompanies this Decision.

Guideline 1 provides that the Landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no specifications, and is responsible for replacing furnace filters, cleaning heating

ducts and ceiling vents as necessary. The Tenants are responsible for cleaning floor and wall ducts. Therefore, the Landlord is responsible for attending to the maintenance of the furnace filter.

The Guideline stipulates that the Landlord is responsible for cutting grass and regular maintenance of **common areas**. The Tenants are responsible for **routine yard maintenance**, including cutting grass or ground cover and clearing snow.

The Landlord testified that an area of 90 feet by 100 feet around the rental unit is the Tenants' yard. I find that the Tenants are responsible for maintaining the ground cover contained within the yard. For the purposes of clarification and certainty, I order the Landlord to clearly mark the area of the Tenants' yard with posts or some other method of identification. This area will be considered part of the rental property and for the Tenants' sole use and enjoyment.

The Tenant's application had merit and she is entitled to recover the cost of the filing fee from the Landlord. Pursuant to the provisions of Section 72(2)(a) of the Act, the Tenants may deduct \$50.00 from future rent due to the Landlord.

Conclusion

The Notice to End Tenancy issued April 30, 2010, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenants may deduct \$50.00 from future rent due to the Landlord.

The Landlord is ordered to mark the boundaries around the rental unit, 90 feet by 100 feet surrounding the rental unit. The Tenants must maintain the general upkeep of this area surrounding the rental unit, including cutting grass and ground cover, and clearing snow. This area is part of the rental property and is for the use and enjoyment of the Tenants.

The Landlord is ordered to maintain the furnace and filters.

Both parties must comply with Section 32 of the 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 *Residential Tenancy Act*.

Dated: July 14, 2010.

Dispute Resolution Officer