



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenants – CNC, MNDC

For the landlord – OPC, MNR, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenants seek to cancel the One Month Notice to End Tenancy for cause and seek a Monetary Order for Money Owed or compensation for damage or loss under the Residential Tenancy Act (Act), regulation or tenancy agreement. The landlord seeks an Order of Possession for cause, a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

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Both Parties served the other Party with a copy of the application and a Notice of the Hearing. I am satisfied that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. Both Parties confirmed receipt of the other Parties evidence. A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Preliminary Issues.

The tenants have applied for a Monetary Order for money owed or compensation for damage or loss. During the hearing the tenants stated that this was due to a dispute over earnings when they were employed by the landlords' manager. When this is an employment arrangement between the

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Parties this is not covered under the *Residential Tenancy Act* and therefore this section of the tenant's application is not considered in my decision and I decline jurisdiction in this matter.

Both parties made their application under the *Manufactured Home Park Tenancy Act*. However, as the tenants rent both the trailer and the site from the landlord both applications actually fall under the *Residential Tenancy Act* and as such the Parties have agreed to amend their application to reflect this and their applications have been heard under the *Residential Tenancy Act*.

Issues(s) to be Decided

- Are the landlords entitled to an Order of Possession?
- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the tenants entitled to cancel the One Month Notice to End Tenancy?

Background and Evidence

Both Parties agree that this month to month tenancy started on December 01, 2009. Rent is \$575.00 per month and is due on the first of each month. The tenants paid a security deposit of \$287.50 on December 01, 2009.

The landlords' manager testifies that the tenants were served with a One Month Notice to End Tenancy for cause on July 28, 2010 by posting it on the tenant's door with an effective date to end the tenancy as of August 31, 2010. The reasons given on this Notice are:

- 1) The tenant or a person permitted on the property by the tenant has:
 - a) Significantly interfered with or unreasonable disturbed another occupant or the landlord
 - b) Seriously jeopardized the health, safety or lawful right of another occupant or the landlord
 - c) Put the landlords' property at significant risk.
- 2) The tenant has engaged in an illegal activity that has or is likely to:

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- a) Adversely affect the quiet enjoyment, security or physical wellbeing of another occupant or the landlord,
 - b) Jeopardize a lawful right or interest of another occupant or the landlord.
- 3) Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- 4) Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord claims the tenants have entered other tenants trailers while they are not at home; they claim these tenants have stolen from other tenants such as a case of beer and these tenants have disturbed other tenants late at night by banging on their doors to be let in. The assistant manager of the park testifies that on one occasion he saw the male tenant running from another tenant's site with a box under his arm. The landlords' manager claims the tenants dogs are allowed to run loose in the park and the tenants do not clear up their dog's feces.

The manager testifies that when she went to the tenant's trailer to serve them with a Notice concerning their behaviour the male tenant came over from his neighbours cursing and swearing at her and nearly knocked her off his step. The manager testifies that these tenants jumped into another tenant's car as they were driving out of the park without permission from the tenants.

The assistant manager of the park testifies that on one occasion a tenant was doing some work underneath his trailer at the park when he heard footsteps he came out and saw the male tenant standing by the trailer and suspects he had entered his trailer. The manager has also provided a statement from another tenant who states these tenants threatened to slash his tires if he signed the petition about them.

The tenants dispute the landlords' testimony; they claim the landlord has provided two petitions allegedly from other tenants. The tenants claim these are both dated the same day and claim that some of the people who have signed these petitions do not even live at the park. They

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claim this petition is a false document as the assistant manager has also signed them. In one he states he lives at number BP and on the second one he states he lives at number 5A, when in fact he does not live on the park at all. The tenants have also provided a statement from the same tenant as the one provided by the landlord concerning the tenants slashing his tires. In this statement he claims he was asked to give a statement by the landlords' manager against the tenants or face eviction.

The tenants claim, that they do not enter other trailers without permission from the tenants and did not steal beer. The male tenant claims he was coming from another trailer with a box of empty bottles that the tenant there told him he could collect. The tenants state they do not disturb other tenants and only knock on the doors of tenants who they are friends with.

The tenant's testify that their dogs are not allowed to roam around the park and are kept in an enclosed yard with the exception of one occasion when one of their dogs did jump the fence after provocation from a passing tenant. The tenants testify that they do pick up after their dogs on a regular basis they dispute the landlords' photographs as they state the pile of alleged dog feces in the picture is actually pine cones which they have swept into a pile. The tenants claim that they only have contact with the manager when they have a police officer present due to her nature. They question her reliability and claims she has changed her story three times in front of a police officer. The tenants claim they have never jumped into another tenant's car without permission.

The manager states other tenants have locked their gates to prevent these tenants entering however they jump over the gates. The manager has provided photographs of some vomit outside the tenants trailer which she claims is a health hazard as they have not yet cleaned it up. The manager testifies that the female tenant came to her trailer and they got into an argument about her wages when the tenant grabbed her wrist and held onto it. The next day the manager states she also had a black eye. She states she did call the police but decided not to press charges.

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The manager called her witness who testifies that the manager did have a black eye but she did not see how this happened.

The tenant testifies that they do not jump over other tenant's gates and another tenant was sick in their yard after sharing breakfast with them. They claim this has been cleaned up by the tenants. The female tenant disputes the managers' testimony concerning the argument over her wages. She testifies that this argument took place outside the managers' trailer not inside and it was the manager who grabbed her wrist and tried to kick her. The tenant states she did not hit the manager in the eye either intentionally or unintentionally.

The manager testifies that the tenants harboured a fugitive around Christmas of 2009. They claim that this put other park residents at risk. The manager claims the tenants do not clean up their trailer or site and they cannot get into the site to make the repairs to the trailer roof. The manager states that she did give the tenants 24 hours written notice to enter but she could not come on that day as she had other things she had to take care of.

The tenants agree that they did have a guest staying at their trailer for five days in February, 2010 not at Christmas as suggested by the manager. When they saw his picture in the newspaper they realised he was a fugitive and he left their trailer. They claim he was wanted on a parole violation and did not cause any harm in the park. The tenants dispute the managers' claims that they do not look after their trailer or site. They claim that five blinds were broken when they moved into the trailer and the manager has been promising to make some curtains for their trailer but has failed to do so. They state they have had to put some cardboard in two of the windows for privacy. The tenants claim they do have some belongings stored outside but no more than a normal assortment of belongs such as a couch and table.

The landlord claims the tenants have been given written notice to correct their behaviour on June 13, 2010 which included a warning about not letting their dogs run loose in the park. Another letter was given to the tenants on June 21, 2010 concerning them entering another tenants unit and another letter concerning the dogs attacking another tenant was issued on August 07, 2010. The manager states the tenants have not corrected these issues.

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The tenants claim that the letter concerning their behaviour was about a domestic argument they had. The female tenant states she sat with the manager and they laughed about it together. The letter concerning them entering another tenants unit was concerning a time when the male tenant went to a neighbour's trailer to return a movie to him. He claims he knocked on the door left the movie and went home. The third letter was concerning the time one of the tenants dogs jumped the fence because another tenant walking by provoked the dog. The tenant claims he called the dog and the dog returned to him. An argument occurred between the male tenant and the other tenant because he threatened to kill his dog and this tenant then complained to the manager.

The manager testifies that the tenants did not pay a pet damage deposit despite asking for this when they moved in. She states that she did not put this demand in writing to the tenants.

The tenant's testify that the manager of the park told them that a pet damage deposit was not required. They claim she signed the agreement that the dogs could reside at the trailer and claim the manager or landlord has never asked for a pet damage deposit until now.

The landlord has made an application to recover unpaid rent but states that the tenants do not owe any rent. The landlord has applied for an Order of Possession and to recover their filing fee.

The tenant's application is to dispute the landlords' application for an Order of Possession and they seek to cancel the One Month Notice to End Tenancy.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness. With regard to the landlords application for an Order of Possession based on the One Month Notice to End Tenancy; In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlords' evidence is contradicted by

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the tenants, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

In this matter I find the landlord has provided witness statements and two copies of a petition. As these witnesses have not appeared at the hearing to give evidence under oath or had their statements sworn before a notary public I find I can place little weight on these statements as they have been contradicted by the tenants. With regard to the petitions I find that the assistant manager has signed these petitions and has used a different site number on each one, the tenants have also stated that some of the parties who have signed the petitions do not live at the park and therefore I can place little weight on these as evidence.

The landlord has provided copies of letters sent to the tenants concerning issues about their behavior, entering another tenant's site and issues with their dogs however no evidence to show that these infractions occurred as stated. The landlord has provided photographic evidence showing dog feces and vomit but no evidence to show when these were taken. With regard to the landlords claim that the tenants harbored a fugitive, or assaulted the manager of the park, I find there is no evidence of the assault and no witness to this. The tenants admit that they allowed a fugitive to stay with them for five days in February, 2010 however, there is no evidence that this impacted on other residents in the park and no evidence to show that the tenants were aware that this person was a fugitive.

With regard to the pet deposit; I find the by the managers own admission she has not requested this payment from the tenants in writing or obtained it from them at the time the landlord and tenants entered into the tenancy agreement. Therefore the landlord is not entitled to ask for a pet deposit at this time pursuant to section 20(c) of the Act.

Therefore, in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.



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With regard to the landlords application for unpaid rent as they have stated that the tenants do not owe any rent this section of their claim is dismissed without leave to reapply.

With regard to the tenants claim for money owed or compensation for damage or loss as this is an employment issue I decline jurisdiction in this matter.

With regard to the landlords' application to recover the filing fee as the landlord has been unsuccessful with his claim I find he must bear the cost of filing his own application.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated, 2009 is cancelled and the tenancy will continue.

The landlords' application is dismissed in its entirety without leave to reapply.

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: September 28, 2010.

Dispute Resolution Officer