



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Final Decision

Dispute Codes:

CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated September 30, 2010. Both parties appeared and gave testimony in turn.

Preliminary Matter

The dispute resolution process was initially scheduled to be heard on October 29, 2010. However at the outset of the original hearing the tenant objected to the jurisdictional authority to proceed under the Manufactured Home Park Tenancy Act. The tenant felt that the tenancy relationship did not fall under the Act on the basis that the tenant allegedly held an ownership interest in the land. Given that this matter had not been raised by the tenant until the hearing had commenced, it was necessary to adjourn the hearing to allow the landlord to respond to the tenant's challenge.

The parties were permitted to submit additional evidence on the restricted topic of whether the tenancy relationship was one that fell under the authority of the Act. The hearing resumed on November 24, 2010.

The landlord had submitted an evidence package to confirm that the ownership of the property was held by the landlord and not the tenant. The tenant submitted proof of billing and payment of property taxes. It was determined that, although the tenant paid property taxes pursuant to the tenancy agreement, the tenant's interest in the land was limited to a leasehold interest on a month-to-month term. Accordingly I found that the tenancy relationship was securely under the authority of the Manufactured Home Park Tenancy Act and that a dispute resolution officer did have jurisdiction to determine the dispute under the Act.

Issue(s) to be Decided

The tenant is disputing the basis for the notice and the issue to be determined based on testimony and the evidence, is whether the criteria supporting a One-Month Notice to End Tenancy under section 40 of the *Manufactured Home Park Tenancy Act*, (the *Act*), has been met, or whether the Notice should be cancelled on the basis that the evidence does not support the cause shown. The burden of proof is on the landlord to justify the Notice.

Background and Evidence

The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated September 30, 2010 showing an effective date of November 1, 2010.

The One-Month Notice to Notice to End Tenancy for Cause indicated that the tenant had:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- seriously jeopardized the health, safety or lawful right of another occupant or the landlord
- engaged in illegal activity that had adversely affected the quiet enjoyment , security, safety or physical well-being of another occupant or the landlord and jeopardized a lawful right or interest of another occupant or the landlord.
- breached a material term of the tenancy and failed to correct this within a reasonable amount of time after written notice to do so

The landlord also alleged that the tenant's rent was repeatedly paid late.

The landlord testified that the tenant or the tenant's associates had disrupted the quiet enjoyment of other residents and caused them to fear for their own safety and the security of their property. The landlord submitted evidence including a report from the park manager dated October 22, 2010 giving a chronology and summary of problems created in the park attributed to the tenant or the tenant's guests. The report discussed specific incidents and complaints received. Some were regarding loud noises after 10 p.m., drunken behaviour such as individuals seen urinating in other's yards, speeding vehicles, drug paraphernalia left in common areas, unlawful parking, stolen vehicles left in the park, an incident of an in-home intrusion that involved threats to the occupants, tenant's dogs running off leash, increased crime in the park presumably committed by the tenant's visitors and frequent police presence allegedly monitoring the tenants and their associates. The landlord described a climate of fear that has developed in the

complex and stated that, despite written warnings, the tenant continued to violate park rules with impunity. The landlord referred to several written complaints from other residents submitted in support of ending the tenancy for cause. In addition to the above, the landlord pointed out that the tenant had repeatedly paid rent late and the landlord referred to documentary evidence verifying that late payments were received on February 5, 2010 for the rent for February 2010 and on July 9, 2010 for the rent due on July 1, 2010. The landlord alleged that there were other occurrences of late payment of rent that could be confirmed by the records as well. The landlord's position was that there was ample cause to end this tenancy and that an Order of Possession for the landlord was warranted based on the facts.

The tenant acknowledged that there were a few problems with speeding cars and one party in which some of the guests had behaved in a boisterous and drunken manner. However, according to the tenant, these kinds of situations have not recurred. The tenant stated that he had no knowledge of, nor connection to, any of the thefts, stolen cars or any individuals in the park causing problems. In regards to the allegation of frequent visitors, the tenant pointed out that although he has a daily visit from a pharmacist who administers medication and often friends come to pick him up to give him a ride when needed, there had not been an unreasonable amount of traffic to his home in recent past. The tenant stated that other residents in the park tended to automatically focus blame on the tenant for anything bad that happens. The tenant acknowledged that rent was late on at least one occasion and stated this would not happen again as his disability benefits have been stabilized. The tenant also stated that there are plans to relocate and his manufactured home will soon be put up for sale.

Analysis

Section 28 of the Act protects a tenant's right to quiet enjoyment. This right applies to other residents in the complex as well as the tenant himself.

If the tenant had engaged in the conduct described, there is no doubt that this would constitute significant interference and unreasonable disturbance of other occupants and the landlord. However, the question of what occurred is not an easy determination to make with nothing more than conflicting verbal testimony and written reports from individuals not at the hearing, particularly as the burden of proof was on the landlord.

It is evident that there have been problems with the tenancy caused by the tenant and his guests. However, ending a tenancy is a drastic measure that is seen as a last resort. I find that it is a fundamental principle of natural justice that a party has the right to be warned of the consequences of the behaviour and be given a fair opportunity to correct the behaviour. The tenant has denied most of the accusations and alleged that all of the remaining problematic conduct has ceased.

Given the above, I find it necessary to cancel the One Month Notice. However, the tenant is cautioned that this decision will serve as a warning and the tenant is now aware that if the conduct is repeated, it could function as a valid reason justifying the landlord to issue another Notice to terminate tenancy for cause under section 47 of the Act. The tenant is also aware that late payment of rent is a valid reason to justify ending the tenancy for cause and that two incidents of late payment were found to be proven by the landlord during the proceedings.

In cancelling this Notice, I encourage the parties to communicate in written form in regards to tenancy-related concerns and to retain copies of all communications.

Conclusion

Based on the above, I hereby order that the One-Month Notice to End Tenancy of September 30, 2010 be cancelled and of no force nor effect.

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: November 2010.

Dispute Resolution Officer