



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNL

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy for the landlord's use of the rental property.

The tenant attended the conference call hearing, gave affirmed testimony, and provided an evidence package in advance of the hearing. However, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents personally on March 9, 2011, the landlord did not attend. All evidence and testimony provided has been reviewed and is considered in this Decision.

At the outset of the hearing, the tenant applied to amend the application to change the spelling of the landlord's name. That amendment is allowed, and the style of cause is changed accordingly.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for the landlord's use of the rental property?

Background and Evidence

This month-to-month tenancy began on May 1, 2010 when the tenant moved into a rental house on the subject property. The tenant testified that about a month after moving in, he changed his rental to living in his motor home on the same property. The rental unit is now a pad on acreage with 5 pads. The tenant believes that all pads are serviced with sewer, water and electricity, and certainly his pad is. Rent in the amount of \$250.00 per month was payable in advance on the 1st day of each month at the commencement of the tenancy and continues to be \$250.00 now that the tenant resides in his motor home. No security deposit was collected by the landlord, and there are no rental arrears.

The tenant testified that the landlord provided him with a type-written notice dated February 21, 2011 stating that the tenant will be required to vacate the property within 30 days of the date of the letter. A copy of the letter was provided in advance of the hearing. The tenant stated he told the landlord that the *Residential Tenancy Act* requires 2 month's notice and one month of free rent, but the landlord wanted him to move. The tenant stated that he is not sure if this matter falls under the *Residential Tenancy Act* or the *Manufactured Home Park Act*, but asks for an order cancelling the notice to end tenancy. He also stated that the living accommodation occupied is not occupied as vacation or travel accommodation, but as his primary residence.

Analysis

The *Residential Tenancy Act* states that it does not apply to tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies. The *Manufactured Home Park Tenancy Act* states that it applies to manufactured home sites and manufactured home parks. It further describes manufactured home sites as "a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home." A manufactured home is defined as "a structure, whether or not ordinarily equipped with wheels, that is designed, constructed or manufactured to be moved from one place to another being towed or carried, and used or intended to be used as living accommodation." Therefore, in the circumstances, I find that the *Manufactured Home Park Tenancy Act* applies.

I have reviewed the notice issued by the landlord and it states that farm construction is to begin and the tenant is required to vacate the property within 30 days.

Section 42 of the *Manufactured Home Park Tenancy Act* states that a landlord may end a tenancy agreement by giving notice to end a tenancy for the landlord's use of the property if the landlord has all necessary permits and approvals required by law and intends in good faith to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park. The *Act* further states that the notice to end the tenancy must end the tenancy effective not earlier than 12 months after the date the tenant receives the notice. Further, the notice must be in the prescribed form. I find that the form given to the tenant is not the prescribed form, and the landlord has not provided the tenant with 12 months notice. Also, I have no evidence before me that the necessary permits and approvals required by law have been obtained by the landlord.

The *Act* further requires the landlord to pay the tenant compensation on or before the effective date of the notice, an amount that is equivalent to 12 months' rent payable

under the tenancy agreement. The notice issued to the tenant offers no amount of compensation to the tenant.

In the circumstances, I find that the notice to end the tenancy issued by the landlord dated February 21, 2011 is not a lawful notice and ought to be cancelled.

Conclusion

For the reasons set out above, the notice to end the tenancy is hereby cancelled.

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: March 22, 2011.

Residential Tenancy Branch