



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

This Hearing was reconvened from May 20, 2011, on the Tenant's application to cancel a 1 Month Notice to End Tenancy for Cause issued April 7, 2011. An Interim Decision was provided on May 24, 2011, which should be read together with this Decision, wherein a portion of the Tenant's application filed April 21, 2011, was severed.

Both parties signed into the teleconference and provided affirmed testimony. They were provided the opportunity to present their evidence orally and in written and documentary form, to ask questions of each other and to provide submissions to me.

I have reviewed all of the oral and written evidence before me that met the requirements of the Rules of Procedure. Only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Determined

Should the Notice to End Tenancy for Cause issued April 7, 2011, be cancelled?

Background and Evidence

This tenancy began in December, 2006. There is no written tenancy agreement between the parties. Rent is \$454.08, due the first day of each month.

On April 7, 2011, the Landlord issued a Notice to End Tenancy for Cause (the "Notice"), effective May 31, 2011.

The Landlord's agents gave the following testimony and documentary evidence:

The Landlord's agent J S-P mailed the Notice to the Tenant at the rental site on April 8, 2011, by registered mail.

A copy of the Notice was provided in evidence. The Landlord has alleged the following reasons on the Notice for ending the tenancy:

Tenant has allowed an unreasonable number of occupants in the site.

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.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Tenant has assigned or sublet the rental site without landlord's written consent.

The Landlord is not pursuing the first cause listed on the Notice, and is not alleging that there are an unreasonable number of occupants in the site. However, the Landlord alleges that the Tenant does not live on the site and has assigned or sublet the rental unit without the Landlord's written consent.

The occupants of the site disturbed other tenants by playing loud music or allowing dogs to bark on February 20, 24, 28, March 2, 5, 6, 23 and 26, 2011. Police were called on March 2, 2011.

The Tenant is in contravention of several of the park Rules. The Tenant has been provided with a copy of the Rules.

The Landlord alleges that the Tenant is in violation of CRD Bylaw 1887, which is a municipal ordinance, because he refuses to remove garbage and debris from the site and tarps from his roof. The Landlord has provided the Tenant with written warnings to clean up the site, but the Tenant has not done so. In addition, the Tenant is making structural changes to the mobile home on the site without approval from the Landlord or permits from the municipality. Such approval from the Landlord is required pursuant to the lease agreement. The Tenant has not affixed skirting to his home, which is another requirement of the lease. The Landlord wrote letters to the Tenant on February 10, 2011, notifying him of these breaches and requiring him to comply with the terms of the lease by March 15, 2011. The Tenant has not complied. The Landlord also wrote to the Tenant on March 19, 2011 demanding that the occupants and their pets move out of the site by March 31, 2011. Copies of these letters were provided in evidence.

One of the occupants that the Tenant has allowed on the site had a dog which was allowed to run free and which killed another tenant's cat on March 16, 2011. The occupant acknowledged that her dog had killed the cat. On May 9, 2011, the occupant's dog attacked another tenant's dog. The Tenant also has a similar dog which frightens the other tenants in the park. The Tenant's dog has not attacked any person or animal.

The Tenant installed a wood stove in the manufactured home and the Landlords were concerned that it was not installed properly and was a fire hazard. The Tenant's oil tank is not securely affixed and is leaking oil which is an environmental hazard and a risk for fire.

The Landlord requested an Order of Possession, effective July 1, 2011.

The Tenant gave the following testimony and documentary evidence:

The Tenant has not assigned or sublet the site. The manufactured home on the site is the Tenant's home base, although he does have other accommodations. The

occupants are his daughters and are caretakers of the site and manufactured home,. They pay no rent to the Tenant. The Tenant continues to pay pad rent.

The Tenant believes the Landlords are harassing him and that they have ulterior motives for ending the tenancy. The Tenant provided sworn declarations from three other tenants in the manufactured home park in support of this claim.

The Tenant gave the Landlords an address for service, which is his advocate's place of business. On March 15, 2011, the Landlords wrote an inflammatory letter to the Tenant's advocate's business partners accusing the advocate of conflict of interest in an attempt to have her removed as his legal counsel. The Landlords would not acknowledge that address and continued to send registered mail and letters to the manufactured home, which the Tenant did not receive, including the letter that the Landlords wrote on March 19, 2011. Any letters that were received by the Tenant's advocate were answered promptly.

The Tenant is not aware of any noise complaints. When he asked the Landlord's agent TG about them after receiving the Notice, the Landlord's agent could not provide any details.

The Tenant was making repairs to the manufactured home on the site and there were some construction materials on the site, which were cleaned up prior to the Landlord's written demand of February 10, 2011. There are other sites in the park that are full of debris, including the common areas and one of the Landlord's agent's yards. The Landlord does not apply the same standard of cleanliness and order to all of the tenants in the park.

There is no tenancy agreement between the parties, despite the Tenant's request for one. The lease agreement the Landlord refers to is an agreement between the Landlords and the owners of the park, which was signed by them in June, 2002. The Tenant is not a party to that agreement.

The cat was killed because it was roaming free and ran across the Tenant's site. The dog chased it and unfortunately caught and killed it. The dog was not deemed to be a danger by the municipality. The Tenant did not know about the second incident until May 10, 2011. The dog was removed from the site on May 15, 2011.

The wood stove was installed properly and has passed an inspection on March 16, 2011. The Tenant provided a copy of the inspection in evidence.

The oil tank is not leaking. The stains on the ground are due to spillage from service work that was provided. The tank was inspected and the Tenant was told to raise some copper piping, which he has done.

Analysis

In a situation where a tenant seeks to cancel a Notice to End Tenancy, the landlord is required to establish, on the balance of probabilities, that the tenancy should end for the reasons indicated on the Notice to End Tenancy.

In this case, the Tenant is alleging that the Landlord's agents have an ulterior motive for ending the tenancy. The Tenant provided an address for service of documents but the Landlord's agents continued to send documents to the manufactured home site. The Tenant provided sworn declarations by 3 independent parties. The Tenant's evidence indicates:

- The person spoke with the Landlord's agent TG, who informed him that he hated the Tenant and wanted him gone from the park. The person has visited the Tenant's home and not found it to be excessively messy or cluttered. The person has observed other sites, including the Landlord's agent TG's home, that also have debris outside.

- Another person has lived in the park for 22 years and has observed the Landlord's agents to be overly concerned with minor matters. This person was told by the Landlord's agent TG that he was "trying to get rid of" the Tenant. He attests that the Tenant's yard is no more cluttered than other yards and that those other yards have not been given eviction notices. This person states that he lives directly across from the Tenant and has not heard dogs barking at the Tenant's house.
- The other person lives the closest to the Tenant and states that he has not heard dogs barking at the Tenant's house.

I find that the Landlord has not provided sufficient evidence that the Tenant, or persons allowed on the rental site by the Tenant, have 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; or put the landlord's property at significant risk.

There was insufficient evidence that the Tenant or a person allowed on the site by the Tenant had seriously jeopardized the health or safety or lawful right of another occupant or the Landlord or put the Landlord's property at significant risk. The Landlords did not dispute that the cat had wandered into the Tenant's yard, or that the municipality did not find the dog to be dangerous, or that the dog was removed from the site. The Tenant provided proof that the woodstove was inspected and found to be satisfactory. Based on the photographic evidence provided by the Landlord, the oil tank may not be appropriately installed, and may have leaked at one point in time. However, this is not sufficient cause to end a tenancy. The Tenant is hereby ordered, within 30 days of receipt of this Decision, to have the oil tank professionally inspected and to comply with any findings made with respect to the safety of its installation. The Tenant is further ordered to provide the Landlord with a copy of that inspection report.

There is no written tenancy agreement between the Landlord and the Tenant. The lease referred to by the Landlord's agent is not a tenancy agreement between the parties.

I find that the Landlord has not provided sufficient evidence to end this tenancy for the reasons contained in the Notice to End Tenancy. Therefore, I grant the Tenant's application to cancel the Notice to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant has been successful in his application and is entitled to recover \$50.00 of the filing fee from the Landlord. The Tenant may deduct \$50.00 from a subsequent month's rent in satisfaction of this award and the Landlord must consider the rent paid in full.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy issued April 7, 2011, is granted. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant is hereby ordered, within 30 days of receipt of this Decision, to have the oil tank professionally inspected and to comply with any findings made with respect to the safety of its installation. The Tenant is further ordered to provide the Landlord with a copy of that inspection report.

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

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

Dated: June 08, 2011.

Residential Tenancy Branch