



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 June 27, 2011. Both parties appeared and gave testimony in turn.

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 Notice should be cancelled.. 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 June 27, 2011 showing an effective date of July 31, 2011.

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

- Put the landlord's property at significant risk
- engaged in illegal activity that had adversely affected the quiet enjoyment , security, safety or physical well-being 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 testified that the tenant had parked a large vehicle on an area that was reserved for the septic field. The landlord acknowledged that the tenant did move the vehicle when requested to do so. The landlord testified that the tenant had permitted an occupant to live in her unit, without having this individual make an application for tenancy first. The landlord stated that the tenant had finally complied, but the form was not properly completed and the individual was rejected as a tenant. According to the landlord, the tenancy agreement requires anyone staying in a home in the park more

than 21 days to become a tenant and anyone who fails to do so is considered to be a trespasser. In a letter to the tenant, the landlord stated:

'This is now June and you still have a person living there without the landlord's permission. Your Contract reads, "*A person not listed in this section, who resides on the site for more than 21 days in a calendar year without written consent of the landlord shall be considered to be a trespasser in the Park*" '

The tenant acknowledged that this individual was staying with her for periods of time, but that he had his own address elsewhere. The tenant stated that all of the other issues raised by the landlord have now been resolved. The tenant does not agree with the Notice and wants it to be cancelled.

Analysis

Section 22 of the Manufactured Home Park Tenancy Act, (the Act), protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with section 23 [*landlord's right to enter manufactured home site restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference. (my emphasis)

Section 24 of the Act states that a landlord must not unreasonably restrict access to a manufactured home park by the tenant of a manufactured home site that is part of the manufactured home park, or a person permitted in the manufactured home park by that tenant. (my emphasis)

Section 5 of the Act states that landlords and tenants may not avoid or contract out of this Act or the regulations and that any attempt to avoid or contract out of the Act or the regulations is of no effect. (my emphasis)

Section 6 of the Act states that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. However, a term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it. (my emphasis)

The landlord has requested an end to the tenancy based on the tenant's violation of a material term of the tenancy and the fact that the tenant has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

I find that the tenant has complied with the landlord's demands including the request for a tenancy application to be submitted by her occupant. I find that the fact the landlord has not accepted this person as a tenant does not affect the tenant's rights under section 24 of the Act to have guests visit as she chooses. I further find that the landlord does not have the authority to unreasonably designate a particular guest as a "trespasser" without valid cause based on the conduct of the individual.

In addition to the above, I find that the landlord still has a right under section 40 of the Act to issue a One Month Notice to End Tenancy for Cause if the tenant's guests contravene the Act or the tenancy agreement by interfering with, or disturbing, other residents or by engaging in prohibited conduct. The tenant is responsible for the behaviour of her guests.

Given the above, I find it necessary to cancel the One Month Notice. However, the tenant is cautioned that this decision serves as a warning and future violations of the Act or agreement may function as a valid reason justifying the landlord to issue another Notice to terminate tenancy for cause under section 47 of the Act.

Conclusion

Based on the above, I hereby order that the One-Month Notice to End Tenancy of June 27, 2011 be cancelled and of no force nor effect.

The tenant entitled to be reimbursed for the \$50.00 cost of the application and may deduct this amount from the next rent owed 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: July 22, 2011.

Residential Tenancy Branch