



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 40, 60, and 65 of the *Manufactured Home Park Tenancy Act (Act)*.

Background and Evidence

The tenancy began in July 2003 as a month to month tenancy for a current monthly rent of \$314.00 due on the 1st of each month.

The tenant submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause dated June 8, 2011 with an effective vacancy date of July 8, 2011 citing the tenant is repeatedly late paying rent and the tenant must move due to health, life and safety issues.

The landlord provided no documentary evidence regarding either cause to end the tenancy but the landlord's agent testified that the site where the tenant's manufactured home sits is not suitable for occupation as it is on the edge of a silt bank that the previous owner made some alterations to without municipal consent or oversight.

The agent further testified that the tenant had paid rent late on several occasions over the course of the tenancy but that there are no records available as they were not passed on from the previous landlord and landlord's agent to the new landlord. During the hearing the landlord's agent noted two occasions where the tenant was late paying the rent – July and August 2010.

The tenant states that since the start of his tenancy the landlord had accepted payment of rent late and by multiple payments through the course of each month but that it was

never usually a concern. The tenant acknowledges that the new landlord has raised the late payment of rent as a problem with this tenancy.

Analysis

Section 40 of the *Act* allows a landlord to end a tenancy for cause including the following:

- (a) the tenant is repeatedly late paying the rent;
- (b) there are an unreasonable number of occupants on the manufactured home site;
- (c) the tenant or a person permitted in the manufactured home park by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;
- (d) the tenant or a person permitted in the manufactured home park by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the manufactured home park, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (e) the tenant or a person permitted in the manufactured home park by the tenant has caused extraordinary damage to a manufactured home site or the manufactured home park;
- (f) the tenant does not repair damage to the manufactured home site, as required under section 26 (3) [*obligations to repair and maintain*], within a reasonable time;
- (g) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- (h) the tenant purports to assign the tenancy agreement or sublet the manufactured home site without first obtaining the landlord's written consent or an order of the director as required by section 28 [*assignment and subletting*];
- (i) the tenant knowingly gives false information about the manufactured home park to a prospective tenant or purchaser viewing the manufactured home park;
- (j) the manufactured home site must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- (k) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - (i) the date the tenant receives the order;

(ii) the date specified in the order for the tenant to comply with the order.

None of the reasons noted in Section 40 include that “the tenant must move due to health, life and safety issues”. I therefore find that landlord may not end the tenancy for this reason.

While Section 40 states that a landlord may end a tenancy for repeated late payment of rent, it is incumbent upon the landlord to provide sufficient evidence that substantiates that the tenant has been repeatedly late paying rent.

The landlord has failed to provide any evidence to support this claim such as a tenant ledger; copies of dated rent receipts; copies of 10 Day Notices to End Tenancy for Unpaid Rent; or any other correspondence between the landlord and the tenant regarding late payments.

As such, I find the landlord has failed to substantiate there is cause to end the tenancy for repeated late payment of rent. However, the tenant should consider being well informed of the landlord's expectation that rent should be paid by the tenant when it is due according to the tenancy agreement and that any additional late payments may be sufficient cause for the landlord to end the tenancy.

Conclusion

For the reasons noted above, I grant the tenant's application and cancel the 1 Month Notice to End Tenancy for Cause issued on June 8, 2011 and find the tenancy in full force and effect.

As the tenant was successful in his application, I find he is entitled to recover the filing fee for his Application for Dispute Resolution in the amount of **\$50.00** from the landlord by withholding this amount from his next rent payment, in accordance with Section 65(2) of the *Act*.

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 13, 2011.

Residential Tenancy Branch