

DECISION

Dispute Codes CNC, OLC, FF, O

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”) for Orders as follows:

1. An Cancelling a Notice to End Tenancy - Section 40;
2. An Order for the Landlord to comply with the Act, regulation or tenancy agreement- Section 55;
3. An Order to recover the filing fee for this application - Section 65; and
4. Other

The Notice to End Tenancy for Cause (the “Notice”) lists the following reasons:

1. Tenant or a person permitted on the property by the tenant has:
 - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - c. Put the landlord's property at significant risk.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice Valid?

Is the Tenant entitled to recovery of the filing fee?

Is the Landlord in non-compliance with the Act, regulation or tenancy agreement?

Background and Evidence

On July 30, 2011, the Landlord served the Tenant with the Notice. The Landlord states that the Tenants have been given the Notice because the Tenants have stored articles beside and behind the unit and that, in addition to being a fire hazard, the articles are obstructing a phase two environmental inspection that was initiated by a complaint from the Tenants. The Landlord filed two letters dated January 17 and June 18, 2011 written to the Tenant advising them to remove the articles due to a fire hazard. It is noted that neither of these letters make any mention of the obstruction of an environmental

inspection. The Tenants state that they have medical problems which do not allow them to move heavy objects and that the Landlord himself placed some of the articles by the house without the permission of the Tenant. The Tenants further state that the articles do not obstruct the inspection as the previous inspection only entailed the taking of small soil samples. Finally the Tenant states that the articles complained of have now all been removed except for some building materials that are still to be used on the renovations being done to the unit.

The Landlord states that one of the Tenants has been harassing the neighbours and submitted letters of their complaints. One neighbour complained in September and October 2008 and in April 2009 that this Tenant had been making sexual comments towards them. Another neighbour complained in April 2009 that this same tenant made insults and used "vile language". The third neighbour complained that this Tenant, who "never shuts up" came to visit uninvited and bothered this neighbour with "mindless talk". A witness for the Landlord, a neighbour of the Tenants, states that they live next door to the Tenants and that the one Tenant is continually calling out to him and his wife, calling them "Mexicans" and calling the wife "Juanita" and "alcapulco". The witness states that this has recently been occurring every day and that although the Tenant is asked to stop calling out, the Tenant does not stop his behaviour. The witness states that his wife tells him that she doesn't listen to him and to just ignore the Tenant. The Landlord states that the Tenant has been noted further to use vile language when asked by the Landlord to stop behaviours such as parking on the road improperly or leaving water running out of a hose.

Finally, the Landlord states that on one occasion, the Tenant was seen to dispose of paint down the outside drain. The Tenants do not disagree that on one occasion paint brushes were washed off in water and that this water was poured down the outside drain but that this has never happened since.

The Tenants state that the complaints of sexual harassment are based on old complaints that the Tenants deny as sexual harassment as there was no intention to sexually harass anyone. The Tenants agree that foul language has been used by the one Tenant. The Tenants state that the terms spoken to the neighbour are meant to be friendly and that the Tenant calls the wife "bonita", which means beautiful in Spanish and not "Juanita". The Tenants state that the one Tenant is trying to be friendly, tries to be a good neighbour and does not mean to bother others. The Tenants state that sometimes the one Tenant is not lucid and that he goes into "spells".

The Tenants do not dispute the incident with the paint however the Tenants state that the fluid poured down the drain was the water used to clean the brushes and paint. The Tenants state that this has not happened since.

The Tenants state that the Landlord has served them with a Notice not because of the reasons stated in the Notice but in retaliation for the assistance the Tenants have given to others who have had problems with the Landlords in the past and because the Landlords are not complying with certain things such as appropriate transformers.

The Landlord argues that taken as a whole over the long period of time, the behaviour and acts of the Tenants show a pattern of behaviour that justifies the Notice as it amounts to significant interference of the other tenants' peaceful enjoyment.

The Tenants state that the Landlords have not complied with a responsibility to change the signage and documents being used to reflect a change in the street address. The Tenants also states that the Landlords have not properly maintained the park area and that a fence needs replacing, logs and tree stumps have not been removed. Finally the Tenants state that the Landlords are not meeting the standards required in relation to the transformers that the Tenants state are running at too low an amperage for the size of the homes in the park. The Tenants request an order that the Landlord comply and make changes and repairs. The Landlord states that the tenants have a responsibility not to exceed the electrical capacity, that \$20,000.00 has already been spent on overhead wiring and trees and that the Tenants cannot expect everything to be done at once. Further, the Landlord argues that the Tenants have not provided any evidence that the Landlord is not in compliance with anything.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Noting that the Landlords did not provide any evidence to support the assertion that the materials stored by the unit were in fact either a fire hazard or an obstruction to the upcoming inspection, and noting that these items have since been removed by the Tenants, I cannot find that the Landlord has substantiated that these items have seriously jeopardized the health or safety or lawful right of another occupant or the landlord or that they have put the Landlord's property at significant risk.

In relation to the behaviour of the one Tenant, while there may be some indication of inappropriate sexual remarks being made to one neighbour, these complaints are two years old and I note that no other recent evidence has been submitted to substantiate harassment of this type. The remaining letters also do not speak to harassment but rather to annoying behaviour. While the witness was clearly frustrated with his neighbours comments and behaviours, I cannot find that the Tenants have significantly interfered with or unreasonably disturbed this neighbour or the Landlord.

As the Landlord did not provide any evidence as to the effect of the paint water being poured into the drain on the property, the Landlord or the neighbours, I find that the Landlord has failed to substantiate that this one-time incident is sufficient cause to end the tenancy.

Given these findings, I conclude that the Landlord has not substantiated on a balance of probabilities any sufficient cause for the Notice, or that the Tenants behaviours taken as a whole over a period of time amount to valid reasons for the Notice and I therefore find that the Notice is not valid. Accordingly, I cancel the Notice and the tenancy continues.

Accepting the evidence of the Landlord that some remedial work has taken place in the park, that more remedial work reasonably takes time and money, and given the lack of evidence as to what part of the Act, regulation or lease agreement is not being complied with, I find that the Tenant has not substantiated the claim for an order compelling the Landlord to act.

As the Tenants have been largely successful with the application, I find that they are entitled to recovery of the filing fee and I order the Tenant to reduce the next rent payable to the Landlord by \$50.00.

Conclusion

The Notice is cancelled and the tenancy continues. I Order the Tenant to deduct the amount of \$50.00 from the next rent payable 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 Act.

Dated: September 09, 2011.

Residential Tenancy Branch