



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 application of the tenants to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice").

The tenants and the landlord's agent appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

On a preliminary note, the landlord submitted evidence of the 1 Month Notice, which was not signed or dated by the landlord. However, the tenants confirmed the Notice they received was signed and dated and confirmed the date as October 26, 2011. Therefore I have accepted that the Notice delivered to the tenants was properly completed by the landlord's agent.

Issue(s) to be Decided

Is the 1 Month Notice to End Tenancy valid or should it be cancelled?

Are the tenants entitled to recover the filing fee?

Background and Evidence

This tenancy began in August 1991 and their monthly home site rent is \$355.00.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenants a 1 Month Notice to End Tenancy for Cause.

The landlord issued a 1 Month Notice to End Tenancy for Cause (the "Notice") on October 26, 2011, by personal delivery, with a stated effective move out date of December 1, 2011.

The causes as stated on the Notice alleged that the tenants 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, engaged in illegal activity which has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, or jeopardized a lawful right or interest of another occupant or the landlord.

In support of the Notice, the landlord's agent testified that the male tenant approached a fellow occupant of the manufactured home park and threatened her. The landlord's agent submitted that the police attended the park and arrested the male tenant.

The landlord's agent was convinced that the tenant had threatened the other occupant as the police would not arrest someone without the incident actually occurring.

Upon query the landlord's agent acknowledged that he had not witnessed the incident, but was informed of the incident.

In support of the Notice, the landlord's relevant evidence included a copy of the home site tenancy agreement, with rules, and a letter from another occupant concerning the alleged behaviour of the female tenant.

In support of their application to cancel the Notice, the tenants submitted that they have had problems with this particular occupant during the course of her tenancy, with that occupant instigating verbal attacks on them and their dog. The tenants stated that they have informed the landlord's agent of the occupant's behaviour on numerous occasions, but the agent would not get involved, telling them to sort out their own problems.

The male tenant acknowledged that he has been ordered to make an appearance regarding the police report, but denied the threats that have been alleged against him.

The tenants submitted that they have lived in the park for 20 years, problem free. The tenants denied they are the source of the problem, rather attributed any issues in the park with the landlord's agent not getting involved with the complaining occupant's harassment of the tenants.

In support of their application, the tenants submitted numerous character reference letters from neighbours in the park and the appearance letter.

Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Once the tenants made an Application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid and to prove the causes listed on the Notice.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenants 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, engaged in illegal activity which has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, or jeopardized a lawful right or interest of another occupant or the landlord.

In reaching this conclusion, I was persuaded by the lack of any statement or testimony from the complaining occupant. I find the landlord's agent's testimony that he was informed of the incident does not rise to the level of proof necessary to end a tenancy. I do not find evidence of an arrest to be proof of guilt.

I was further influenced by the tenants' evidentiary letters, which corroborates the tenants' testimony that the complaining occupant has instigated the behaviour in question and that the tenants have made multiple complaints to the landlord's agent on previous occasions, with no results.

There is no evidence before me to support that the tenants were issued written warnings or that they have been made aware, in writing, that if their actions, if true, continue it could lead to ending their tenancy.

I therefore find that the landlord has submitted insufficient proof to establish the causes listed on the Notice.

Conclusion

Having found that the landlord has provided insufficient evidence to meet the burden of proof necessary to end a tenancy, **I order the 1 Month Notice to End Tenancy for Cause issued by the landlord be cancelled and this tenancy continues until it may otherwise end under the Act.**

Having found that the tenants' application had merit, I award the tenants recovery of the filing fee. The tenants may deduct the amount of \$50.00 from their next monthly home site rent payment in satisfaction of their monetary claim of \$50.00.

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: November 18, 2011.

Residential Tenancy Branch