



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, O

Introduction

This hearing was convened by way of conference call in repose to the tenant's application to cancel the Notice to End Tenancy for cause; other issues; and to recover the filing fee from the landlord for the cost of this application.

The tenant, the landlord and the landlord's lawyer attended the conference call hearing. The parties gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy for cause cancelled?

Background and Evidence

Both parties agree that this tenancy started on December 05, 2011. The tenant rents a manufactured home from the landlord for a monthly rent of \$500.00. Rent is due on the first day of each month in advance.

The landlord testifies that the tenant was served a One Month Notice to End Tenancy for cause on May 17, 2012 which was posted to the tenant's door. This notice is dated May 17, 2012 and has an effective date of June 30, 2012. The Notice has one reason given on it to end the tenancy and states the tenant has engaged in an illegal activity that has, or is likely to damage the landlord's property.

The landlord testifies that the tenant was verbally warned twice by the landlord's son in law to clean up the mess outside the tenants unit on March 15 and March 30, 2012. On April 16, 2012 the tenant was again asked to clean up the mess outside his unit by the landlord and the tenant was notified that he was not to store garbage or lumber.

The landlord testifies that he went to the unit on May 04, 2012 to do some yard work and found although some of the mess had been cleaned up there was still enough mess left outside to prevent the landlord being able to cut the grass or carry out other yard maintenance.

The landlord testifies he asked the tenant to remove the items but the tenant became verbally abusive. The landlord's lawyer states the tenant has failed to maintain a reasonable standard of cleanliness around the unit and the tenant is not entitled to use the yard except for parking.

The landlord testifies that they took pictures of the debris around the tenants unit and the landlord states although the tenant has taken some measures to clear the debris enough remains to prevent the landlord gaining g access to the faucet at the side of the unit and the debris encourages mice. The landlord testifies that he continually has to carry out mouse control around the tenants unit.

The tenant disputes the landlord's claims and testifies that the landlord's access under the unit is not covered up by the tenants belongings stored at the side of his unit. The tenant testifies that the landlord did not have a written tenancy agreement and a verbal agreement was in place for the tenant to rent the unit and parking for his RV and trailer.

The tenant testifies the other units also have access to the yard on the side of their units and the tenant assumed he also had access as the landlord did not inform the tenant at the start of the tenancy that he was not to use the yard. The tenant states now the landlord informs the tenant that he cannot use the yard even for the tenant's bar-b-que.

The tenant testifies that the landlord does not control mice and the only poison the landlord put out was for 'rats' around a year ago. The tenant testifies that the landlord is always coming to the tenants unit and banging on the tenants door. The tenant testifies that whenever the landlord has asked the tenant to remove items from the yard the tenant has complied and now the landlord is complaining about a mat the tenant has put down outside to prevent mud coming into the unit. The tenant testifies that the only items stored now at the unit are a canoe and a stand the tenant uses to do work on his truck. All items are stored between the tenant's recreational vehicle(RV) and the tenants unit.

Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I have considered the documentary evidence and verbal testimony of the parties and find the landlord has provided no evidence to show that the tenancy is limited to the rental unit and parking for the tenants RV and trailer. By their very nature verbal terms are difficult to prove and when it is one person's word against that of the other then the burden of proof is not met. With this in mind the tenant would be able to use the property he is renting to store personal belongings unless there is some regulation documented in the tenancy agreement to the contrary.

I further find the landlord has stated on the two month notice that the tenant has engaged in an illegal activity which has or is likely to damage the landlords property. I can find no evidence to show exactly what illegal activity the tenant has engaged in or how this has or is likely to damage the landlord's property.

Therefore In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated May 17, 2012 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, the tenant is entitled to recover the **\$50.00** filing fee for this proceeding and may deduct that amount from the next rent payment when it is due and 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 *Residential Tenancy Act*.

Dated: June 12, 2012.

Residential Tenancy Branch