



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC, FF
Tenant: CNC, FF, O

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and to recover the filing fee for this proceeding. The Tenant applied to cancel a One Month Notice to End Tenancy for Cause dated July 18, 2012 and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started at the end of January 2011. The Landlord said the Tenant had just purchased the manufactured home on the site and said he was going to renovate then sell the manufactured home but instead moved into it. Consequently, the Landlord said the Tenant signed only a copy of the Park Rules and did not sign a tenancy agreement. The Landlord's agent said on July 18, 2012 she served the Tenant with a One Month Notice to End Tenancy for Cause by leaving it in the Tenant's mail box. The grounds set out on page two of that Notice were that,

- The Tenant or a person permitted on the property by the tenant has:
 - 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;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord's agents claim that after the Tenant moved in he moved in two dogs as well as his daughter and granddaughter. The Landlord's agents said the Park Rules prohibit pets and occupants who are not seniors and as a result, on February 13, 2012, the Tenant was given a letter demanding that he comply with the Park Rules or face eviction. The Landlord's agents said they did not see the dogs for a while however after a few months at least one of them reappeared in the Park. The Landlord's agents said

on May 19, 2012, they received a letter from a neighbour of the Tenant's reporting that they had seen the Tenant walking a dog and letting it defecate on the property and not pick it up. The Landlord's agents said on July 23, 2012, they also received three separate verbal complaints from neighbours of the Tenant's that the dog in his mobile home was barking well after 10 p.m. when the Tenant was not home.

The Tenant said that his daughter and her husband broke up shortly after he moved into the mobile home and the dogs belonged to his daughter. The Tenant said he looked after the dogs for his daughter for a short time only, found a home for one and returned the other to his daughter. The Tenant said his daughter could not look after the dog so asked him again to look after it for a short while which he did in mid-July, 2012 but in any event before the Landlord's agent served him with the One Month Notice (which the Landlord denied based on the complaints of barking made on July 23, 2012). The Tenant denied that he walked the dog in the Park as alleged or that he allowed the dog to defecate in the Park. The Tenant also denied that his daughter or granddaughter resided with him and said they were guests only for a week end on one occasion.

The Landlord's agents also claimed that in mid to late- April 2012, the Tenant parked a vehicle belonging to his girlfriend at the front of the Park with a "for sale" sign on it contrary to the Rules. The Landlord's agents said they did not know at the time who the vehicle belonged to so they had it towed. The Landlord's agents said over the next couple of days, the Tenant left 7 or 8 "violent and threatening" messages on their answering machine that concerned them so much that they reported them to the RCMP. The Landlord's agents argued that the Tenant is constantly breaching the Park Rules and that when they bring it to his attention he accuses them of harassing him.

The Tenant admitted that he left messages on the Landlord's answering machine about the vehicle being towed. The Tenant said he believed the vehicle was parked on City property (the easement area in front of the Park) and not in the Park itself and therefore he argued that the Landlord's agents did not have a right to tow it. The Tenant claimed that he was never told that he could not put a car for sale in that area. The Tenant also claimed that the Landlord's agents were being "pushy" and trying to aggravate him by having the vehicle towed. The Tenant further claimed that the Landlord's agents blew his telephone messages "out of proportion" and that the RCMP did not file any charges because he made no threats. The Tenant argued that the Landlord's agents served him with the One Month Notice because he filed a Small Claims action against them regarding the towed vehicle.

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.

Although the Landlord's agents did not provide a copy of the Park Rules and the letter dated February 13, 2012 sent to the Tenant ordering him to comply with the Rules, the Tenant did not dispute these things. However, the Tenant argued that he did comply with the letter by not having any pets as of mid-July 2012 and denied that he ever had occupants residing in the Park who were not seniors.

I find that the Tenant breached the Park Rules by allowing his daughter's dogs to reside in the Park not only once, but on two occasions; one of which followed his receipt of a Breach letter dated February 13, 2012. However, the ground of the Notice alleged by the Landlord was that the Tenant breached a "**material term**" of the tenancy agreement as it is defined under RTB Policy Guideline #8. I find that the Landlord's agents provided no evidence that the rule prohibiting pets is a material term that warrants ending the tenancy for even the most minor breach (see also RTB Policy Guideline #28 Pet Clauses), and for that reason, I find that the Landlord cannot rely on this ground of the Notice to end the tenancy.

I also find that the telephone messages the Tenant left for the Landlord's agents following the towing of his girlfriend's vehicle were offensive and abusive. The Landlord's agents played approximately 4 or 5 of those messages at the hearing in which the Tenant sounds extremely agitated as he shouts and calls the Landlord's agents such things as "mother f***ers," accuses them of "playing stupid f***ing games" and demands that they return the vehicle. While the Tenant's conduct in leaving these telephone messages is clearly unacceptable, I find that they do not contain threats. The Tenant argued that he left these telephone messages in the heat of the moment and he apologized at the hearing for doing so.

In order to warrant ending the tenancy, the Landlord must show that the Tenant's conduct has "*significantly interfered with or unreasonably disturbed another occupant or the Landlord*" or "*seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*" I find that there is no evidence that the Tenant's actions have seriously jeopardized the health or safety or lawful right of another occupant or the landlord but I do find that the telephone messages left by the Tenant in mid to late April come **very close** to meeting the standard of "*unreasonably disturbing*" the Landlord. In other words, I find that the Tenant's conduct in leaving abusive telephone messages was insufficient to end the tenancy because they related to a single incident regarding the towing of a vehicle by the Landlord (which is still awaiting resolution by the Provincial Court). Consequently, at this time I grant the Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated July 18, 2012 and dismiss the Landlord's application in its entirety without leave to reapply.

However, the Tenant is now put on notice that should he again speak to or act in an offensive or abusive manner to the Landlord's agents after having been given

written notice in this Decision that such conduct is unacceptable, the Landlord may then have sufficient grounds to end his tenancy.

Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated July 18, 2012 is granted. I find that this is not an appropriate case to order the Landlord to bear the cost of the filing fee the Tenant paid for his application and that part of his application is dismissed without leave to reapply. The Landlord's application is dismissed without leave to reapply.

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: August 29, 2012.

Residential Tenancy Branch