



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC

Preliminary Matter

The landlord confirmed that the rental unit included both the manufactured home and the park pad which are owned by the landlord and rented to the tenant. Therefore, although the tenant's application was made under the *Manufactured Home Park Tenancy Act*, I find that this tenancy relationship is actually governed by the *Residential Tenancy Act*, because the Manufactured Home Park Tenancy Act would apply to situations in which a park owner only rents the pad site, or land, to the tenant. In situations where the residential unit itself is rented by the landlord to a tenant, then the Residential Tenancy Act will apply. Accordingly, I find it necessary to amend the tenant's application to reflect that this matter was determined to be under the Residential Tenancy Act.

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated September 30, 2012.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and that the tenant had breached a material term of the tenancy and failed to correct it within a reasonable time after written notice to do so.

Both parties appeared and gave testimony during the conference call. A witness for the landlord was present.

Issue(s) to be Decided

Should the One-Month Notice to End Tenancy be cancelled?

The burden of proof is on the landlord.

Background and Evidence

A copy of the One-Month Notice to End Tenancy for Cause dated September 30, 2012, was in evidence showing an effective date of October 31, 2012. The landlord testified that the tenant had significantly interfered with and unreasonably disturbed the landlord and other occupants.

The landlord testified that numerous complaints were received from other residents about the tenant, including loud music, arguments, yelling and confrontational conduct.

The landlord submitted written testimony from the park owner and other residents, as well as a nearby business, about the tenant's loud and aggressive conduct. The landlord was also concerned that an associate of the tenant, who is subject to a restraining order, has repeatedly breached the order by appearing in the park. According to the landlord, interactions between the tenant and this individual have interfered with the quiet enjoyment of other residents and required police attendance. The landlord's witness supported the landlord's allegations.

The landlord testified that every time she attempts to do maintenance work on the premises, comes to collect rent or tries to inspect the unit, the tenant becomes belligerent. The landlord testified that the tenant aggressively video-tapes her activities by following her in close proximity, while relentlessly haranguing her. The landlord testified that the tenant also makes it a practice to raise his voice and inflict verbal abuse on the landlord whenever she is in the area and that this often occurs in front of others.

In regard to the allegation by the landlord that numerous complaints were received from other residents about the tenant's loud music, arguments, yelling or confrontational conduct, the tenant stated that this was "*pure fiction*".

In regard to the controversy involving the nearby business, the tenant denied that he ever displayed aggressive conduct, but admitted that he, like others, had become frustrated with the excessive noise coming from the business and felt that he had no choice but to express his opinion. The tenant stated that, at one point he did come close to a physical fight when one of the workers came into the park and challenged him, but the tenant pointed out that this confrontation was initiated by the worker.

In regard to the tenant's former associate who is now subject to a restraining order, the tenant pointed out that he has no control over this individual and should not be held accountable for her actions, given that he has taken legal steps to ensure she does not come on the premises. The tenant testified that when she violates the order, he does his best to convince her to leave peaceably, even contacting police if necessary.

The tenant disputed the testimony and witness statements that he acted in an aggressive manner toward the landlord or any other residents. The tenant stated that he was put in the position of having to defend himself from the landlord's continual harassment. The tenant acknowledged that he did raise his voice on occasion, but stated that the landlord has also raised her voice during these exchanges as well.

The tenant testified that the landlord's practice of showing up on the premises without proper notice and trying to forcibly engage him in a discussion caused him to react in a negative manner in the past. The tenant testified that, despite the fact he has made it clear that he was not willing to speak with her, the landlord persists in bothering him and that is why he found it necessary to be more emphatic in his reaction. According to the tenant, he never acted in a threatening way toward the landlord. The tenant stated that the landlord has gone out of her way to encourage others to make inflammatory comments to him and about him.

The tenant stated that he has lived in the park for 7 years without significant problems and these recent issues only arose after the new owner took over the rental. The tenant referred to the evidence he had submitted, which included positive statements from witnesses about his general conduct in the park.

With respect to the other reason for ending the tenancy, that being an alleged breach of a material term of the tenancy which the tenant failed to correct within a reasonable time after written notice to do so, this related to the tenant's failure to clean-up his yard.

In regard to the alleged breach of the tenancy agreement indicated as one of the causes on the One Month Notice to End Tenancy for Cause, the landlord testified that this related to complaints that were received about unsightly garbage in the tenant's yard, which he had repeatedly been told to clean up by May 2012. According to the landlord, warnings were given to her by the park owners and management who were prepared to terminate the landlord's site agreement over this matter. The landlord testified that numerous residents in the park were also concerned about this situation.

The tenant stated that, while his physical health had delayed the clean-up, his yard was now clear and the concerns have been fully resolved.

Analysis

Section 28 of the Act protects a tenant's right to quiet enjoyment and this right applies to all residents in the complex.

I find that the landlord did not provide sufficient proof to confirm that the tenant's conduct was overtly threatening. With respect to conduct proven to have occurred, such as the intimidating video-taping and hostile commentary, I find that, while this

conduct may have been inappropriate, it was not sufficiently significant to warrant terminating the tenancy for cause at this point. Accordingly, I find that the One-Month Notice must be cancelled.

That being said, I find that the tenant did conduct himself in a hostile manner against the landlord and others on occasion, particularly when the landlord attempted to speak to him directly. The tenant has been made aware that this kind of behaviour is contrary to the Act and cannot be tolerated. In addition, the tenant has been made aware that yelling, taunting and aggressive gesturing could also be perceived as significant interference.

The tenant is cautioned that this dispute resolution decision will serve as a warning to the tenant that, in future, if any significant interference or unreasonable disturbance is inflicted on the landlord or other residents in the complex going forward, it could be considered as a valid reason to justify issuing another Notice to terminate tenancy for cause under section 47 of the Act.

In cancelling this Notice, I hereby order that the tenant restrict all communications with the landlord to written form and encourage the landlord to do the same.

In addition, I order that the tenant must also refrain from the following conduct.:

- Loud arguments that can be heard by others.
- Hovering over or following the landlord while video-taping her.
- Gesturing, using foul language or making inappropriate remarks.
- Confronting the landlord or others in the park directly.

The tenant has agreed to pay the rent each month in cash, delivered by the tenant to the land lord on, or before, the first day of each month and I order that this is the process to be followed in future.

The landlord acknowledged that she is aware that 24 hours written Notice is required if the landlord intends on entering the suite and that inspections should be conducted no more frequently than once per month. I order that the landlord comply with section 29 of the Act with respect to accessing the unit.

Based on the above, I hereby order that the One-Month Notice to End Tenancy dated September 30, 2012 be cancelled and of no force nor effect.

Conclusion

The tenant is successful in his application to cancel the Notice, but the decision will serve as a caution for the tenant to govern future conduct and the parties are ordered to communicate in written form.

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: November 05, 2012.

Residential Tenancy Branch