Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cedar Creek Manufactured Home Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy. The hearing was conducted via teleconference and was attended by the tenant's agent and the landlord's agent.

At the outset of the hearing, I clarified with the tenant's agent that although he lives with the tenant he is not listed on the tenancy agreement and despite naming himself as a tenant on the Application for Dispute Resolution I must amend his Application to name only the tenant named in the tenancy agreement.

In addition, the party named as the respondent is the park manager and not the landlord. The parties agreed that the landlord is the manufactured home park name and as such I have amended the tenant's Application to reflect the correct landlord name.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 40, 60 and 65 of the *Manufactured Home Park Tenancy Act (Act).*

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties March 31, 2013 for a month to month tenancy beginning on April 15, 2011 for a monthly rent of $355.00 due on the 1st day of each month.

The tenancy agreement stipulates in clause 7 that: "The landlord has approved only the following pet(s)_____. As a material term of this Agreement, the Tenant agrees to adhere to all Park Rules regarding pets and agrees to obtain the Landlord's approval in writing before bringing any pet into the Park....." In the blank is handwritten the notation "1 PET".

The tenant submitted a copy of the portion of the Park Rules regarding pets and these were reviewed during the hearing with the landlord's agent. The relevant clause to this dispute states: "1. Tenants must receive written approval from park management for any pet prior to moving into the park."

Both parties provided a copy of an Application for Tenancy signed by the parties on March 10, 2011. In response to statement D "Only the following pet will be kept on the site" the tenants had written "Honey (dog)". On the copy provided by the landlord there is an additional handwritten notation stating: "Large dog not to be replaced".

The tenant submits this notation was not on the copy of his Application for Tenancy and has provided his copy into evidence. The landlord's agent submits that he does not return a signed copy of an Application for Tenancy to an applicant and so the copy provided by the tenant must include the signed portion of his copy (provided in evidence) and a copy of the tenant's original Application which the agent altered after it was provided by the tenant.

The tenant submits that their original dog passed away and in June 2012 the tenant mentioned to the landlord's agent that he intended to get a new dog and the agent responded that it would be fine. The tenant submits that the landlord did not state at that time that they would need to get written approval for the new dog.

The tenant also submits that because he had originally had approval to have a dog in the first place he felt that there was no need to get an additional approval. The tenant's agent testified the clauses in the tenancy agreement and Park Rules were confusing and contradictory.

The landlord's agent did not provide any testimony regarding the discussion in June 2012 but did indicate that he had been made aware that the tenant had a different dog and on January 5, 2013 he wrote a letter to the tenant advising him that: "It is a park requirement that each new pet be registered. The park allows only small pets, which must be less than twenty-five pounds and spayed or neutered." The agent provided a copy of what he referred to as the "registration form".

The landlord provided, into evidence, a document entitled “Pet Agreement” that the tenant completed in response to the January 5, 2013 letter. In the document the tenant is asked to describe his pet and provides reiteration of some of the relevant park rules and some additional criteria for the parties to agree to in the agreement.

The Pet Agreement includes the following statement: “In addition, any breed of dog or any other kind of pet that because of its disposition and size elicits a response of fear or a sense of intimidation or presents a danger or would cause a nuisance for fellow tenants is not permitted to enter or remain in the Park at any time (for example, Pit Bull, Rottweiler or Doberman dogs). The tenant has indicated on the Pet Agreement that he has a Labrador Retriever cross that weighs 15 pounds. The tenant also submits his original dog was a Rottweiler cross

The landlord’s agent submits that the owner of the park provides the final decision related to pet approvals and in this case the landlords rejected the tenant’s Pet Agreement. The agent testified the landlords rejected the tenant’s pet because of its size.

The landlord provided, into evidence, a copy of a letter dated January 23, 2013 to the tenant’s agent stating: “The owners have reviewed your application to bring the “Labrador Retriever” into the park. This dog is in violation of Cedar Creek M.H.P. pet agreement “that pre approval must be obtained before bringing the animal into the park. Pre approval is a mater term of Cedar Creek M.H.P. Pet Agreement as well as Cedar Creek M.H.P. tenancy agreement. Please remove the pet by February 6, 2013.

When the tenant failed to remove the dog the landlord issued a 1 Month Notice to End Tenancy for Cause on March 26, 2013 with an effective date of April 30, 2013 citing the tenant was in breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Analysis

Residential Tenancy Policy Guideline 8 defines a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

In the case before me, while the statement in clause 7 of the tenancy agreement outlines the written pre-approval for pets is a material term, I accept the tenant’s position that the additional notations and documents provided are confusing and contradictory for the following reasons:

1. Clause 7 also indicates that the “Landlord has approved only the flowing pet(s) 1PET.” I find this indicates that at the time of signing the tenancy agreement the landlord had agreed to allow the tenant to have 1 pet and there appears to be no restriction as to which pet that is or if it even included an existing pet.

2. I find that wording in Park Rule #1 is ambiguous, at best, and only indicates that the tenant must receive written approval for any pet prior moving into the park. Generally tenant’s move into parks and pets are acquired by tenants. As such, I find the Park Rule to be unclear as to the requirements of tenants after they have moved into the park if they wish to obtain a pet and did not get approval prior to them moving into the park.

3. I find the letter from the landlord’s agent dated January 5, 2013 speaks only about registering the new pet – not of applying for approval. I also note that this is the first time in any of any of the documentation provided by either party that landlord indicates there is weight restriction of 25 pounds.

4. I find the Pet Agreement contains several clauses that are not included in the Park Rules and are therefore not park rules but additional rules that may or may not be enforceable as they are not listed as park rules in accordance with the Manufactured Home Park Tenancy Regulation.

5. I find the clause in the Pet Agreement stipulating that any breed of dog that because of its disposition and size elicits a response of fear or a sense of intimidation or presents a danger or would cause a nuisance for fellow tenants is not permitted to enter or remain in the park at any time (for example, Pit Bull, Rottweiler, or Doberman dogs) to be unclear with the exception of the specific naming of the three breeds.

   From the landlord’s agent’s testimony the tenant’s dog was rejected because it was too big and yet there is no specific weight restriction outlined in either the Park Rules or the Pet Agreement. In fact, the Pet Agreement requires a combination of factors including size and temperament and as such, I find a pet cannot be rejected solely on size.

6. In addition, in the case before me, the tenant has indicated that their original dog was, at least in part, a Rottweiler and this dog was permitted by the landlord when the tenant was seeking to start the tenancy and now the landlord refuses to accept a similar sized dog of breed that is generally know as more congenial than the noted

breeds above. As such, the landlord has allowed this tenant to have a breed that is specifically identified as one that may be rejected.

7. Further the weight of the dog indicated on the Pet Agreement by the tenant is 15 pounds and the landlord has provided no evidence that contradicts this weight and therefore this dog is well below the arbitrary weight of 25 pounds identified in the landlord's agent's letter of January 5, 2013.

In regard to the Application for Tenancy, I find that regardless of when the additional notation was placed on statement D that "large dog not to be replaced" the Application does not form a part of the tenancy agreement or the Park Rules and is therefore of insufficient consequence to materiality of the term in the tenancy agreement.

Based on the above, I find that Clause 7 (the Pet Clause) and other relevant terms of the tenancy agreement and park rules are unclear and contradictory and sometimes appear to be arbitrary. As a result, I find the landlord cannot rely on these clauses to be a material term of this tenancy where a breach would be sufficient to end the tenancy.

Conclusion

For these reasons, I grant the tenant his Application and cancel the 1 Month Notice to End Tenancy for Cause and find the tenancy remains in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **$50.00** comprised of the fee paid by the tenant for this application.

I order the tenant may deduct this amount from his next rent payment in accordance with Section 72(2)(a).

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: April 30, 2013

Residential Tenancy Branch