



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALPINE VALLEY ESTATES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT CNC O

Preliminary Issues

At the outset of this proceeding the parties agreed that the named respondent is a resident manager and the Landlord is a corporation. Both parties were in agreement to amend the application to show the respondent as the corporate Landlord and remove the resident manager's name. Accordingly, the application was amended. The resident managers provided evidence and testimony as agents for the Landlord; therefore, throughout this decision they are referred to as the Landlords.

Upon review of the Landlord's written submissions the Landlords advised that they did not serve the Tenant with copies of their last two submissions of evidence. They did however serve him with their original 19 page submission. The Tenant confirmed receipt of the initial evidence package.

Not serving evidence to the applicant is a contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Tenant has not received copies of the Landlords' last two submissions I find that evidence cannot be considered in my decision. I did however consider the Landlords' testimony and original submission of evidence.

Section 40 (4) of the Act stipulates that a tenant has ten days to make application to dispute a Notice issued for cause. The evidence supports that the Tenant received the 1 Month Notice on February 28, 2013 and he filed his application to dispute the Notice on March 5, 2013. Accordingly, the Tenant does not need to seek more time to make his application and that request is dismissed.

Introduction

This hearing dealt with an Application for Dispute Resolution filed March 5, 2013, by the Tenant to cancel the Notice to end tenancy issued for cause and for other reasons relating to the issuance of the Notice.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the 1 Month Notice to end tenancy issued for cause February 20, 2013 be upheld or cancelled?

Background and Evidence

The Tenant submitted documentary evidence which included a copy of a letter from his physician.

The Landlords submitted documentary evidence which included, among other things, copies of: their written statement; the tenancy agreement; photos of the manufactured home park; an e-mail from the previous manager; and witness statements.

The parties confirmed the tenancy began on April 30, 2007, and rent is payable on the first of each month in the amount of \$285.00. The Landlord attempted to personally serve the Tenant with the 1 Month Notice to end tenancy on February 28, 2013; however, the Tenant refused to accept the Notice so the Landlord placed it on a bench, beside gloves, close to where the Tenant was standing.

The Landlords submitted that they have been park managers since June 2012 and from the onset they inherited this issue relating to the Tenant digging trenches. As supported by the e-mail from the previous park manager, the Tenant has continued to dig in a

trench that is located between road and the fence which is near his manufactured home pad. The area where the Tenant is digging is considered common area. They have made repeated oral requests to the Tenant to stop digging and it is getting to the point where they are concerned he will hit the natural gas line. They stated that the trench is directly above the natural gas and electrical lines and there may be telephone and cable lines buried in that area. This trench is 2 or 3 feet from the road, approximately 70 feet long and is 8 to 10 inches deep. They have been told that the gas line is supposed to be two feet below ground and it needs at least 12 inches of ground cover. The Trench is 10 inches deep in some areas, which is too close to the gas line, and is posing a danger to all residents.

The Landlords argued that the Tenant is now digging across the road in front of units 10, 11, and 12; as supported by their witness statements. They are concerned about the Tenant's well being considering recent behaviors and his age. They have been contacted by the Tenant's granddaughter's husband who requested that they hold off on the eviction until the Tenant's son returns to the country and makes arrangements for him to be relocated. They were going to hold off but the Tenant filed to have the Notice cancelled so they felt they needed to proceed.

The Tenant advised that he is not physically capable of digging such a large trench; as supported by his Doctor's letter provided in evidence. He advised that the trench was initially created some time ago when a truck drove on the soft ground and got his wheel stuck. He admitted that over time he has chipped away ice to enable the melting ice and snow to flow through the trench. He stated that in the previous year he was digging at the other end of the trench for about 12 feet as he had the idea to drain the water from the snow and ice towards the creek.

The Tenant stated that he has had to chase away children who have been playing on snow piles which the previous resident manager piled up on either side of his driveway. He also had to chase the children away from his lamp stand because he felt the area was unsafe as there was not enough dirt at the base of the lamp. As a result, he decided to remove dirt from the trench areas and pile it up at the base of his lamp.

The Tenant confirmed that he has been digging on the other side of the road in front of units 11 and 12 but argued that everyone has been doing this for about five years. He argued that the ditch on that side of the road was about 5 or 6 inches deep but they put gravel in it to close it up.

The Tenant submitted that he has never been issued a written warning to stop digging in the trenches nor does he recall being told that he would be evicted if he continued to

dig. He argued that he is chipping away at the trench to keep the water away from his basement.

The Landlords confirmed they have never issued the Tenant a written warning nor do they have records of written warnings from the previous manager. The Landlords had no explanation on why this situation has continued for so long before anyone took action. They noted that the Tenant starts digging then stops for a while so time passes. They argued that there is no ditch across the road and that when they lived across from the Tenant they had to deal with flooding when the snow melted on their side of the road each spring and they simply dealt with it.

At the conclusion of this proceeding as discussion took place where I informed the Tenant that from this day forward he was not to scratch, dig, or take any action that would alter the condition of the common property, trench, ditch, ice, or snow piles. The Tenant's legal counsel reiterated this to the Tenant.

The Tenant stated that he understood that if the Landlords verify that he has taken any action to alter the condition of common property in the future, the record of this hearing would form part of the Landlords' case to end his tenancy should it come before an Arbitrator for consideration. He also confirmed that he understood that if he had concerns about the condition of the property, snow melting, or water pooling, he was to send his concerns to the Landlords in writing.

Analysis

When a landlord issues a 1 Month Notice to end tenancy for cause the burden lies with the landlord to prove the reasons for ending the tenancy.

The 1 Month Notice to End Tenancy issued February 20, 2013 and served February 28, 2013, cited the following reasons for issuance:

The tenant or a person permitted on the property by the tenant has:

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Put the landlord's property at significant risk

Tenant has caused extraordinary damage to the unit/site or property/park

Section 40(1) of the Act stipulates that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has failed to correct a situation within a reasonable time after the landlord gives written notice to do so.

Based on the foregoing, I find there to be insufficient evidence to uphold the Notice. Accordingly, the 1 Month Notice to end tenancy issued February 20, 2013 is cancelled.

Conclusion

The 1 Month Notice issued February 20, 2013, is HEREBY CANCELLED and is of no force or effect. This tenancy continues until such time as it is ended in accordance with the Act.

From April 3, 2013 forward, the Tenant is not to scratch, dig, or take any action that would alter the condition of the common property, trench, ditch, ice, or snow piles. 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 04, 2013

Residential Tenancy Branch

