



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. Both parties attended the hearing and had opportunity to be heard. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy started in April 2007. The rental unit is a pad located in a manufactured home park.

On April 04, 2013, the parties attended a hearing by conference call to address an application by the tenant to cancel a notice to end tenancy for cause, served on the tenant on February 28, 2013. The issues surrounding that notice were discussed in detail and are similar to the reasons for the notice to end tenancy that is the subject of this hearing. The landlord filed a copy of the decision into evidence.

During that hearing on April 03, 2013, the tenant admitted that he had been digging on common property. However, the Arbitrator found that the tenant had not been served with written notices to cease this activity of digging trenches on common property and therefore the Arbitrator cancelled the notice to end tenancy.

At the conclusion of the proceeding, the Arbitrator informed the tenant that from that day on (April 03, 2013), the tenant was not to “*scratch, dig or take any action that would alter the condition of the common property, trench, ditch, ice or snow piles*”.

In order to ensure that the tenant understood the directive from the Arbitrator, during the hearing on April 03, 2013, the tenant's legal counsel reiterated the Arbitrator's direction to the tenant. The tenant confirmed that he understood that if the landlord verifies that he has taken any action to alter the condition of common property in the future, the record of the hearing on April 03, 2013, would form part of the landlord's case to end his tenancy.

The landlord filed photographs of the tenant using a shovel on his property and on common property. These photographs were taken on June 19, 2013. The photographs on file were faxed copies which lacked clarity. To confirm the information on the photographs, I asked the tenant whether the photographs showed him with a shovel on his property and on common property. The tenant confirmed that he was the subject of the photographs. The tenant also confirmed that a small pile of dirt was seen on the photograph taken of the tenant with a shovel, on common property.

The landlord filed a written submission stating that on June 19, 2013, the landlord saw the tenant with shovel in hand, digging on common property. The landlord requested the tenant to stop this activity. The tenant refused to listen and continued to so. The landlord served the tenant with a notice to end tenancy for cause. The reason for the notice was that the tenant had caused extraordinary damage to the property.

The landlord stated that despite having been ordered by the Arbitrator not to even scratch the surface of common property, the tenant paid no heed to the order or to the landlord's request to stop digging. The landlord's concerns are that the tenant will strike gas lines and/or other utility cables that are buried underground in the area that he digs.

The tenant's counsel pointed out that the rental pad has drainage issues that the landlord does not take steps to resolve. The tenant believes that to prevent damage to his property from flooding, he must dig a trench to enable water to flow away from his mobile home.

On April 18, 2013, the landlord had a contractor from a construction company look at the pad. In a letter from the landlord to the tenant dated May 07, 2013, the landlord informed the tenant that the contractor did not see any drainage problems during his visit.

The tenant's council stated that the landlord had misinterpreted the note from the contractor. She stated that the fact that the contractor had not seen any problems did not necessarily mean that there were no problems.

The tenant filed a letter from the contractor that confirmed that no drainage problems were observed but also stated that the contractor was not in a position to offer a professional opinion. The contractor also stated that at the time of the visit there was no water, rain or snow melt that could have caused a drainage problem. The contractor advised the landlord to engage the services of a professional topographer for a detailed site plan of the park.

The tenant made a complaint to the local municipality and an inspector visited the site. Neither party filed any written report from this inspector. The landlord stated that he spoke with the inspector and the inspector did not mention any problem with drainage on the rental pad occupied by the tenant.

The landlord stated that he had already received complaints from other tenants regarding the tenant digging on their property. The landlord's concern was for the damage and/or injury that the tenant could cause if he struck a gas pipe or a utility cable.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the tenant has caused extraordinary damage to the property

Based on all the evidence before me, I find that the tenant was served a notice to end tenancy in February 2013 for the same issue of digging on common property. The tenant disputed the notice and during that hearing he was directed to refrain from this activity.

The tenant's counsel argued that the tenant had simply removed about an inch of dirt which was not causing extraordinary damage to the landlord's property. However the tenant was specifically instructed not to even scratch the surface of common property and was put on notice that any such behaviour would result in an end to the tenancy.

Upon receiving this direction during the previous hearing, the tenant acknowledged that he understood the implications of his activity of digging on common property. The tenant confirmed that he understood that if he continued to dig on common property, his tenancy could end. Despite this the tenant continued to indulge in this activity.

I find that the concerns that the landlord has are reasonable. The area that the tenant digs has gas lines and other utility cables running underground. Damage to these lines and cables could have serious consequences and result in serious injury and/ or death to the tenant and/or other occupants of the park.

Despite having been put on notice to refrain from digging on common property, the tenant continued to do.

Based on the above, I find that the actions of the tenant can significantly jeopardize his own safety and that of the other occupants. In addition, his actions also put the landlord's property at significant risk. The tenant was already put on notice that any digging activity on common property would result in an end to the tenancy.

The tenant did not pay heed to this order and I believe on a balance of probabilities, that it is more likely than not that the tenant will continue to participate in this digging activity, thereby putting himself and other occupants of the park at serious risk. Accordingly, I uphold the notice to end tenancy and dismiss the tenant's application to set it aside.

Conclusion

The notice to end tenancy is upheld and the tenancy will end.

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: July 31, 2013

Residential Tenancy Branch

