



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ian Angus Holding Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 40 of the *Manufactured Home Park Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 11, 2009 and that when the tenancy began there was an agreement that the rent was due by the first day of each month.

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was personally served to the Tenant on August 12, 2013, which declared that the Tenant must vacate the site on September 30, 2013. The reasons cited for ending the tenancy on the Notice to End Tenancy were that the Tenant has been repeatedly late paying rent; that the Tenant has allowed an unreasonable number of occupants in the unit; 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; that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; that the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and that the Tenant has assigned or sublet the rental unit without written consent.

The Landlord stated that for the past 3.5 years the Tenant has consistently paid her rent late, by providing him with post dated cheques that were payable on the fifth day of each month. The Tenant stated that several years ago the Landlord agreed that she could pay her rent by the fifth day of each month and that she periodically provided the Landlord with postdated cheques that were payable on that date. She stated that the Landlord has only recently insisted that the rent be paid on the first day of each month and she has recently provided him with postdated cheques that are payable on the first day of each month.

The Landlord stated that several years ago the Tenant told him she could not pay her rent until the fifth day of each month; that he did not agree to alter the due date of the rent; that he accepted the postdated cheques for the fifth day of each month because he did not believe he had any other option; and that prior to serving her with a Notice to End Tenancy he never informed her that paying on the fifth day of each month was unacceptable.

The Landlord stated that the cheque for rent for March was not cashed until March 06, 2013, at the request of the Tenant; that the cheque for rent for February was not cashed until February 07, 2013, at the request of the Tenant; and that the cheque for rent for September of 2012 was not cashed until September 15, 2012, at the request of the Tenant.

The Tenant stated that she did not ask the Landlord to delay cashing her cheque for February or March of 2013; that he had her post dated cheques; and that he could have cashed them on the fifth day of those months. She stated that she may have asked him to delay cashing the cheque for September of 2012 but she cannot recall, due to the passage of time.

The Landlord stated that he believes the Tenant has sublet the site. He stated that on July 24, 2013 the Tenant allowed a third party to park a bus on her site; that she allowed the third party to live on the bus; that he does not know if the third party was paying rent; and that the Landlord asked the Tenant to have the bus removed. At one point the Landlord stated that the bus was removed approximately 2 weeks ago and he subsequently stated that it was there for three weeks, which would mean that it was removed approximately 5 weeks ago.

The Tenant stated that the person living in the bus was a personal guest; that the guest did not pay rent; that the bus was only on the site for 1.5 weeks; and that she has the bus moved upon the request of the Landlord.

The Landlord stated that on July 27, 2013 when his son, who is the manager of the manufactured home park, asked the Tenant to move the bus the driver of the bus displayed aggressive behaviour towards his son.

The Tenant stated that she observed the argument on July 27, 2013 and that the argument was between the manager of the manufactured home park and an occupant of a different site, who she knows as "Russell". She stated the driver of the bus was not involved in this argument. The Landlord stated that he does not know who "Russell".

The Landlord stated that during the argument on July 27, 2013 the Tenant used inappropriate language toward the park manager. The Tenant agrees she used inappropriate language, however it was in response to inappropriate language and comments made to her by the park manager.

The Landlord submitted a letter, dated September 10, 2013, from an occupant of the manufactured home park. In the letter the author stated that he observed the owner of the vehicle "become combative" towards the manager of the manufactured home park on July 27, 2013.

The Landlord stated that on March 23, 2013 the male living on the site seriously assaulted another occupant of the manufactured home park.

The Tenant stated that she was present when the male living on her site got into a fight with another occupant; that the fight actually occurred on March 19, 2013; that the other occupant initiated the fight by striking first; that she has given a statement to the police; and that charges are not being pursued because the parties assaulted each other.

The Landlord submitted a letter from the occupant of the other site who was involved in this fight, dated September 10, 2013. In the letter the occupant declares the male living on the Tenant's site hit him several times; that prior to the assault he attempted to "escort/push" the assailant out of his home; that the Tenant was not present when the assault occurred; and that the police are not laying charges because the assault was mutual.

The Landlord and the Tenant agree that the Tenant has permission to have one dog on the site; that the Tenant acquired a second dog after this tenancy began; and that a few weeks ago the Landlord told the Tenant that she could not keep the second dog on the property. The Tenant stated that the second dog is no longer at the site. The Landlord did not dispute that the second dog is no longer at the site.

The Landlord and the Tenant agree that the tenancy agreement allows two people to occupy the site and that the site is being occupied by the Tenant and one other occupant. The Landlord contends that the male living with the Tenant has not been approved by the Landlord and is not, therefore, entitled to live on the site.

Analysis

Section 40(1)(a) of the *Act* authorizes a landlord to end a tenancy if a tenant is repeatedly late paying rent.

On the basis of the undisputed evidence, I find that when this tenancy began the rent was due by the first day of each month. I find that the Tenant believed that this term of the tenancy agreement was subsequently amended to allow her to pay rent by the fifth day of each month. Given that for an extended period of time she provided the Landlord with postdated cheques that were payable on the fifth day of each month; that the Landlord accepted those cheques; and the Landlord did not formally advise her that he wanted the rent paid by the first day of each month after she began paying on the fifth day of the month, I find this belief was reasonable. I therefore find that the Landlord does not have the right to end this tenancy pursuant to section 40(1)(a) of the *Act* on the basis of the rent being paid by the fifth day of the month.

As the Landlord has now clearly informed the Tenant that the Landlord wishes to enforce the term of the tenancy agreement that requires the rent to be paid by the first day of each month, the Tenant must comply with that term of the tenancy agreement. Failure to pay rent by the first day of the month in the future could result in the tenancy ending.

I find that the Landlord has submitted insufficient evidence to show that the Tenant asked him to delay cashing the rent cheque for February and March of 2013. In reaching this conclusion I was heavily influenced by the testimony of the Tenant, who stated that she did not ask the Landlord to delay cashing the cheque and by the undisputed evidence that the Landlord was in possession of a cheque for those months, which he could have processed in spite of the alleged request to delay cashing the cheque. I therefore find that the Landlord does not have the right to end this tenancy pursuant to section 40(1)(a) of the *Act* on the basis of the Landlord not cashing the rent cheques for February and March of 2013 until after the fifth day of those months.

On the basis of the testimony of the Landlord, I find that the Landlord did delay cashing the rent cheque for September of 2012 at the request of the Tenant. In reaching this conclusion I was influenced by the Tenant's acknowledgement that this testimony may be true. I find that the Landlord does not have the right to end this tenancy pursuant to section 40(1)(a) of the *Act* on the basis of this late payment, however, as the Landlord has failed to establish that the Tenant has been late paying her rent on any other occasion.

Section 40(1)(h) of the *Act* authorizes a landlord to end a tenancy if the tenant assigns or sublets a manufactured home site without first obtaining the landlord's written consent. In the absence of any evidence that suggests the Tenant was collecting rent from the person who had a bus parked on the site, I find that there is no evidence that the site was sublet to a third party. I therefore find that the Landlord does not have the right to end this tenancy pursuant to section 40(1)(h) of the *Act*.

Section 40(1)(c) of the *Act* authorizes a landlord to end a tenancy if the tenant or a person permitted in the park by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park; seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; or put the landlord's property at significant risk.

I find that the bus was not on the site for an extended period of time. In reaching this conclusion I was influenced by the testimony of the Tenant, who declared it was only there for approximately 1.5 weeks and by the testimony of the Landlord, who stated that it was there for approximately 3 weeks. I find the Landlord's testimony that the bus was only removed approximately two weeks ago is less reliable, as it contradicts his testimony that it was there for three weeks and it is in sharp contrast to the testimony of the Tenant.

As the bus was not on the site for an extended period of time and the Tenant had the bus removed at the request of the Landlord, I find that the presence of the bus is not grounds to end this tenancy pursuant to section 40(1)(c) of the *Act*.

I find that the Landlord has submitted insufficient evidence to establish that the driver of the bus acted aggressively towards the manager of the manufactured home park. In reaching this conclusion I was heavily influenced by the testimony of the Tenant, who stated that the argument on July 27, 2013 involved the manager of the manufactured home park and an occupant of a different site in the park. I find that her testimony is more reliable than the testimony of the Landlord, as he was not present during the incident and is simply repeating what has been told to him.

In determining this matter, I placed limited weight on the letter, dated September 10, 2013, from the occupant of the manufactured home park who witnessed the incident on July 27, 2013. I find this letter of limited evidentiary value, as the author was not present to explain how he knew the person involved in the argument was the owner of the bus. Without clarification from this witness, I find it entirely possible that the person he witnessed in the altercation was an occupant of another site.

In determining this matter, I was influenced, to some degree, by the absence of evidence from the manager of the manufactured home park. Given that he was the person involved in the incident and he would be able to refute or confirm the allegation that the person in the argument was an occupant of another site, I find that his evidence would have been extremely helpful.

As the Landlord has failed to establish that the person involved in the incident on July 27, 2013 was a guest of the Tenant, I find that the Landlord does not have grounds to end this tenancy on the basis of this incident.

While I accept that the Tenant made inappropriate comments to the park manager on July 27, 2013, I find that he also made inappropriate comments to her. In reaching this

conclusion I was heavily influenced by the absence of evidence from the park manager that refutes the Tenant's testimony that the park manager also made inappropriate comments to the Tenant. As the park manager has demonstrated that he is equally capable of behaving inappropriately, I cannot conclude that the incident significantly interfered with or unreasonably disturbed the park manager.

I find that the Landlord has submitted insufficient evidence to establish that the fight between the male living with the Tenant and another occupant of the manufactured home park is grounds to end this tenancy. In reaching this conclusion I was heavily influenced by the written declaration of the other occupant of the manufactured home park, who acknowledged that this incident occurred after he "escorted" and/or "pushed" the male out of his home. As the occupant was at least partially responsible for this altercation, I cannot conclude that the tenancy should end on the basis of this particular incident.

I do note that a physical assault is a very serious matter and any further incidents of this nature could result in the end of both tenancies. I simply do not find it appropriate to end the tenancy of only one of the combatants in circumstances such as these, when the assault was not unprovoked.

Section 40(1)(b) of the Act authorizes a landlord to end a tenancy if there are an unreasonable number of people living on the site. As the tenancy agreement allows two people to occupy the site and that the site is being occupied by the Tenant and one other occupant, I cannot conclude that there are an unreasonable number of people living on the site. I therefore cannot conclude that the Landlord has grounds to end this tenancy in accordance with section 40(1)(c) of the Act.

Section 40(1)(g) of the Act authorizes a landlord to end a tenancy if the tenant fails to comply with a material term of a tenancy agreement and does not correct the situation within a reasonable time after the landlord gives written notice to do so. This would be the appropriate reason to cite on a Notice to End Tenancy if the Landlord wished to end a tenancy because there was an unauthorized person living on the site. As the Landlord did not cite this as a reason for ending the tenancy, I cannot consider whether the Landlord has grounds to end the tenancy pursuant to section 40(1)(g) of the Act.

For the benefit of both parties, if the Landlord wishes to end this tenancy because another person is occupying the site, pursuant to section 40(1)(g) of the Act, the Landlord will be required to establish that the Tenant has breached a material term of the tenancy; that the term of the tenancy agreement is reasonable; that the Landlord gave the Tenant written notice to correct the breach; and that the Landlord has reasonable grounds to withhold approval of a new occupant.

As there is no dispute that the Tenant complied with the Landlord's request to have the second dog removed from the site within a reasonable amount of time after being requested to do so, I find that the Landlord does not have grounds to end this tenancy on the basis of the Tenant bringing an additional dog to the site.

When all of the evidence is considered in its entirety, I find that the Landlord has not established grounds to end this tenancy. In determining this matter I was influenced, to some degree, by the Tenant's apparent willingness to comply with directions provided to her by the Landlord: she had the bus removed within a reasonable amount of time; she had the second dog removed within a reasonable amount of time; and she has now provided the Landlord with postdated cheques for the first day of each month. While I find that she is working cooperatively with the Landlord, she should be aware that her tenancy could be in jeopardy if she or a guest on her site unreasonably disturbs other occupants of the manufactured home park in the future.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish grounds to end this tenancy, I set aside the One Month Notice to End Tenancy, and I order that this tenancy continue until it is ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 24, 2013

Residential Tenancy Branch

