



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, FF

Introduction

This Application for Dispute Resolution by the tenant was not complete in that the tenant did not indicate the nature of the dispute. However, in the details of the dispute the tenant indicated that they were being prohibited from bringing their camper trailer in the park as it has been designated as a permanent fixture. The tenant testified that they are seeking to cancel a One-Month Notice to End Tenancy for Cause issued by the landlord on the basis that the tenant has breached a material term of

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

The tenant is disputing the basis for the notice and the issue to be determined based on testimony and the evidence, is whether the Notice should be cancelled. The burden of proof is on the landlord to justify the Notice.

Background and Evidence

The tenancy began in 2002 but the parties had recently signed a new tenancy agreement. No copy of the agreement was submitted into evidence. However, both parties agreed that the document contains a term forbidding tenants to have trailers, boats or other recreational vehicles as “*permanent fixtures*”, on their pad sites. The landlord stated that they consider this to be a material term of the tenancy.

The tenant objected to the term, and pointed out that they did not want to sign the new agreement but were pressured to sign the new contract. The tenant testified that they

were not aware that they could decline the new agreement and that they could instead choose to keep their original tenancy agreement. The tenants stated that, had they known this to be the case, they would not have signed it.

The landlord argued that these tenants and other tenants who were presented with the new agreement, were made fully aware of the different terms and were specifically told that they were not being forced to sign the new agreement. According to the landlord the contract was left with the tenants and they voluntarily signed it. In support of this testimony, the landlord pointed out that some tenants in the park have declined to sign the new agreement and opted to keep their existing agreement, which was allowed.

When asked if there was any documentary evidence to confirm that the tenants were adequately informed of their right to refuse to sign the new agreement, the landlord stated that all of the discussions were only verbal. But the landlord repeatedly emphasized that nobody was forced to sign.

In any case, the fact is that the tenants did sign the new agreement and they also acknowledged that there is a term contained within this agreement that prohibits them from adding another trailer or vehicle as a permanent fixture on their pad. However, the tenant pointed out that, although they do have a camper, it is NOT a permanent fixture. The tenant stated that the camper is not permanently affixed to the site and therefore does not violate the new tenancy agreement term.

The landlord's position is that this is a material term that was violated by the tenants by virtue of the fact that they did bring their camper into the park and parked or stored their camper on site. The landlord feels that the One Month Notice to End Tenancy for Cause is justified and should be enforced.

The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated September 8, 2013 showing an effective date of October 31, 2013.

The One-Month Notice to Notice to End Tenancy for Cause indicated that the tenant had:

"breached a material term of the tenancy and failed to correct this within a reasonable amount of time after written notice to do so."

A copy of a letter from the landlord to the tenant was in evidence, dated September 1, 2013, demanding that the tenant refrain from having a trailer in their yard and warning:

"If it is brought in again, a Notice of Eviction will be given."

The tenant's position is that it is not a material term restricting the additional trailers and other vehicles. Moreover, the tenant is of the opinion that their camper does not meet the definition of a "permanent fixture" and therefore, the Notice is not valid and must be cancelled.

Analysis

Unclear Term

Section 6 of the Act states that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. However, a term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it. (my emphasis)

I find that, the term in the tenancy agreement respecting the addition of trailers, boats, campers and other vehicles is unclear under section 6(3)(c) and as such can not be enforced at all.

Material Term

The landlord has requested an end to the tenancy based on the tenant's violation of a material term of the tenancy and the fact that the tenant has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Determining the materiality of a term requires a focus upon the importance in the overall agreement and it falls on the person relying on the term to present evidence that it qualified as a material term to both of the parties signing the agreement at the time.

A material term is a term that the parties had both agreed was so important that the most trivial breach of that term would give the other party the right to end the agreement and the question goes to the root of the contract.

In any case, I find that that the tenancy term forbidding these vehicles is not a material term, regardless of interpretation of the exact meaning, because there is no indication that this particular term was considered to be a material term to both of the parties at the time they signed the agreement.

I find that the landlord has not sufficiently proven that the term prohibiting trailers, campers, boats and other items from being added to the site as permanent fixtures is genuinely a material term of the tenancy.

Interpreting "Permanent Fixture"

In addition to the above, I find that there is a question of interpretation in regard to the term, "permanent fixture", with the landlord believing that if such a vehicle remains parked on the site for extended periods of time, it is a permanent fixture and therefore is not allowed, while the tenant's interpretation is that their trailer is not a permanent fixture as it is not attached to the site in any way.

According to Black's Law Dictionary, the word FIXTURE has a precise legal definition which includes the following:

"That which is fixed or attached to something permanently as an appendage and not removable"

"A thing is deemed to be affixed to real property when it is attached to it by its roots, imbedded in it, permanently resting upon it, or permanently attached to what is thus permanent, as by means of cement, plaster, nails bolts, or screws."

Black's Law Dictionary defines PERMANENT as,

"Continuing or enduring in the same state, status, place, or the like, without fundamental or marked change, not subject to fluctuation, or alteration, fixed or intended to be fixed; lasting; abiding ; stable; not temporary or transient."

I find that the tenant's camper does not qualify as a "*permanent fixture*" as it does not meet the legal definition of "*fixture*" in any respect.

Given the above, I find that there is no basis for the One-Month Notice to End Tenancy for Cause and I find that this Notice must be cancelled, as requested by the tenant.

Based on the evidence before me I hereby order that the One-Month Notice to End Tenancy dated September 8, 2013 be cancelled and of no force nor effect.

The tenant entitled to be reimbursed for the \$50.00 cost of the application and may deduct this amount from the next rent owed to the landlord.

Conclusion

The tenant is successful in the application and is granted the request to cancel the landlord's One-Month Notice to End Tenancy for Cause.

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: October 28, 2013

Residential Tenancy Branch

