



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act"). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

The tenant and the landlord attended the hearing. The parties gave affirmed testimony and were provided the opportunity to present any documentary evidence was the submitted in accordance with the Rules of Procedure.

The landlord confirmed that he had received the documentary evidence from the tenant and that he had the opportunity to review the tenant's evidence prior to the hearing. The tenant stated that she received the landlord's evidence, but due to the evidence being served late, she was unable to respond to the landlord's evidence with her rebuttal evidence. The landlord's evidence was excluded from the hearing as a result, as the landlord's evidence was submitted late and not in accordance with the Rules of Procedure.

Issue to be Decided

- Should the 1 Month Notice be cancelled?

Background and Evidence

The parties agreed that a month to month tenancy began on September 28, 2007. Currently the monthly rent is \$319.00 per month and is due on the first day of each month.

The tenant submitted a copy of the 1 Month Notice in evidence. The 1 Month Notice is dated September 30, 2013, which the tenant confirmed was received on September 30,

2013. In the 1 Month Notice, the landlord has alleged one cause. The cause listed alleges that the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property, "FELLED 2 ALDER TREES FOR FIREWOOD."

The tenant stated that there were not two trees, just one tree with two branches and that she did cut the tree down with permission from the landlord. The tenant referred to her documentary evidence, a letter written from a witness for the tenant, CW, dated October 6, 2013, which reads in part:

"I Witnessed [name of landlord] give [name of tenant] permission to have her brother who is a faller to remove the dangerous tree. This happened in the summer of 2012..."

[reproduced as written]

The landlord was asked if he gave the tenant permission to fall the tree, as indicated by the tenant and supported by the tenant's witness statement submitted in evidence. The landlord testified, "that conversation was two years ago and I told the tenant that the removal of the tree would be considered as long as I did not incur costs." The landlord then confirmed during the hearing that he, as the landlord, did not incur costs when the tenant cut down the tree. The landlord denied giving permission to the tenant to cut down the tree.

The tenant submitted photos, supporting witness statements, the 1 Month Notice and other documentary evidence. I have reviewed all oral and documentary evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Analysis

Based on the above, the testimony and documentary evidence, and on a balance of probabilities, I find as follows.

The 1 Month Notice dated September 30, 2013 has an effective vacancy date of October 31, 2013. The tenant disputed the 1 Month Notice on October 7, 2013 which is within the ten day timeline provided for under section 40 of the *Act* to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. The landlord did not submit any documentary evidence in support of the 1 Month Notice that was submitted in accordance with the Rules of

Procedure. An allegation without supporting evidence to support that allegation, such as witness testimony or witness statement is not sufficient evidence to prove a 1 Month Notice. Furthermore, I am satisfied based on the tenant's documentary evidence, that the landlord did provide permission for the tenant to cut down the tree as long as the landlord did not incur costs. The landlord confirmed during the hearing that he did not incur costs related to the tenant cutting down the tree.

At the very least, I would have expected the landlord to have called witnesses, or to have submitted documentary evidence in accordance with the Rules of Procedure that supported that the tenant engaged in illegal activity as alleged in the 1 Month Notice. Based on the above, **I find** the landlord has provided insufficient evidence to prove the cause alleged in the 1 Month Notice. Therefore, **I cancel** the 1 Month Notice dated September 30, 2013 as the 1 Month Notice is **not valid**.

I order the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The 1 Month Notice issued by the landlord is cancelled.

I order the tenancy to continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 15, 2013

Residential Tenancy Branch

