



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to apply to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

At the outset of the hearing I clarified that on November 11, 2013 the tenant received a 1 Month Notice to End Tenancy for Cause issued by the landlord on November 9, 2013. The tenant submitted her Application for Dispute Resolution to cancel the Notice on November 12, 2013.

Section 40 (4) of the *Manufactured Home Park Tenancy Act (Act)* allows the tenant 10 days after receipt of a 1 Month Notice to End Tenancy for Cause to submit an Application for Dispute Resolution to cancel such a notice. As the tenant applied 1 day after receiving the Notice I find the tenant applied within the required 10 days allowed and there is no need to consider allowing the tenant additional time to file her Application. I amend her Application to exclude the matter of additional time.

During the hearing, the landlords did not verbally request an order of possession should the tenant be unsuccessful in her Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 40 of the *Act*.

Background and Evidence

The tenant provided into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on June 26, 2009 for a month to month tenancy beginning on June 1, 2009 for a monthly pad rental of \$247.25 due on the 1st of each month; and

- A copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on November 9, 2013 with an effective date of December 10, 2013 citing the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord or jeopardize a lawful right or interest of another occupant or the landlord.

The landlords testified that the tenant's adult son who has been living with her has been a problem for several years and that they had provided a written warning in 2012. The landlords submit that the tenant's son has engaged in illegal activity on the property in two forms.

First the landlords submit that they found a contraption in the yard that included a pressure cooker and hot plate (photograph submitted into evidence). The landlord believes that this contraption has something to do with illegal drugs.

The landlords also submit the tenant's son has been seen by other tenants stealing items from another site on the property. The landlords submit that they do not have any statement from anyone who has witnessed this behaviour because the other residents are scared of the tenant's son and they do not want to get involved.

The tenant submits that the pressure cooker was used for cooking apples to use in wine making and that there is no evidence or proof that he has stolen anything from any other site.

The landlords submit that they have not involved the police because they didn't want to have the police visit the family again as the police are often there. The landlords submit that if it weren't for the tenant's son they would be glad to have the tenant remain in the park. The tenant submits that she is attempting to have her son move from the park.

Analysis

Section 40 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that:

- i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- ii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

As the reasons allowed under Section 40 that the landlords have relied upon to issue the Notice to End Tenancy are predicated on the requirement that the tenant or their

guest have engaged in an illegal activity it is incumbent on the landlord to provide sufficient evidence to establish that the party has engaged in an activity that is illegal.

As the landlords have only guessed that the contraption in the back yard was related to an illegal activity and that the tenant's son had engaged in that activity and as the tenant has provided an equally plausible account of a legal purpose for the pressure cooker, I find the landlords have provided no actual evidence that any illegal drug activity has occurred on site.

In addition, in the absence of any statements or oral testimony from anyone who may have evidence that the tenant's son had indeed stolen any items from any other sites in the park, I find the landlords have failed to establish the tenant's son has stolen anything.

As the landlords have failed to provide any evidence of any illegal activity I find that they have failed to establish any allowable ground under the *Act* to end the tenancy for cause.

Conclusion

Based on the above, I grant the tenant's Application and cancel the 1 Month Notice to End Tenancy for Cause issued on November 9, 2013.

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: January 06, 2014

Residential Tenancy Branch

