



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VISTA VILLAGE TRAILER PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, CNR, OLC, FF

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated May 9, 2014 and a Ten Day Notice to End Tenancy for Unpaid Rent. Copies of the Notices were submitted into evidence.

The parties confirmed that the tenant paid the rental arrears within 5 days of the Notice effectively cancelling the Notice. Therefore I find that there is no need to make a ruling on the 10-Day Notice to End Tenancy.

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

- Should the 1-Month Notice be cancelled?

Background and Evidence

The tenancy began in September 1999 and the pad rent is \$422.00.

The tenant is disputing the One Month Notice to End Tenancy for Cause. The Notice indicated that the reasons for terminating the tenancy included the following:

- The tenant repeatedly paid the rent late.
- The tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord bears the burden of proof to justify the Notice.

The landlord testified that the tenant has paid the rent late on numerous occasions and the landlord has requested that the tenant provide post-dated cheques, pursuant to the park rules.

The landlord testified that the tenant and his guests have violated numerous park rules and engaged in the following conduct:

- Allowing others to move into his trailer without permission
- Parking too many cars on the pad lot
- Having an unlicensed vehicle parked on site
- Breaching the park rules with respect to garbage
- Storing items in common areas including wood and tires
- Not controlling or cleaning up after his dog
- Refusing to follow water restrictions
- Rude and offensive treatment in communicating with the landlord and others
- Failing to pay taxes that are due
- Permitting the use of ATVs on the property
- Allowing guests to park overnight in areas other than designated visitor parking spots
- Unruly conduct in the park including drinking, making noise, speeding and damaging the grass.

The landlord submitted photographic evidence, a copy of the tenant's payment record, copies of the park rules, copies of communications and written statements. A copy of the tenancy agreement was also in evidence. The landlord testified that the tenant has received numerous verbal and written warnings. The landlord pointed out that general notices have also been issued cautioning residents and reminding them to follow various park rules.

The tenant testified that most of the above allegations made by the landlord are not true and that many of the landlord's concerns had already been rectified as soon as the tenant was made aware of the concerns. The tenant testified that they are also being blamed for things that were perpetrated by other residents or their guests.

The tenant denied that visitors associated with his site have been speeding or causing damage to the park lawns.

The tenant stated that, while he did have an extra vehicle without a plate at one point in the past, this was sold and caused no harm or disruption.

In regard to the allegation about operating their ATV, the tenant stated that they do not mobilize it within the park, but only have it stored and transport it elsewhere to ride. The tenant pointed out that the tenancy agreement does not specifically prohibit storing an ATV. The tenant stated that they are aware that the park rules bans riding ATVs within the park.

In regard to violating the garbage rules, the tenant stated that there was only one occurrence involving grass clippings and no violation has happened since then.

With respect to the watering restrictions, the tenant stated that he tries to keep his lot looking good but acknowledged that he is now aware of the park watering restrictions and will follow the rules in future.

In regard to allegations that they allow their dog to roam, the tenant stated that this accusation has no merit as he has complied with the rules since being approached by the landlord. The tenant said that there are other residents with dogs who are not complying with the rules and he is being blamed unfairly.

With respect to the storage of materials in a common area, the tenant stated that the items in question are stored against the far end of his own trailer and he does not believe they are unsightly, nor is he aware that they are intruding into the common area.

In regard to the allegation that the tenant has been confrontational and rude, the tenant acknowledged that he has been agitated by the manner in which the park manager served the Notice and over comments that were made about the tenant's character and the tenant admitted that he may have reacted in a negative way, but was not abusive or threatening.

In regard to the late payment allegations, the tenant stated that he deposits the rent each month into the landlord's account. The tenant has not submitted post dated cheques as requested by the landlord.

Analysis

In regard to the cause put forth by the landlord as warranting termination of the tenancy under section 40(1)(d)(i) of the Act, I find that the landlord must prove that the tenant or associates of the tenant significantly interfered with or unreasonably disturbed other residents in the park or the landlord.

I find that the testimony from both parties confirms that there have been some incidents in the past where the landlord has found it necessary to caution the tenant. However, I find that some of the warning letters placed in evidence by the landlord are dated *after* the One-Month Notice to End Tenancy for Cause was already issued and after the

tenant had applied for dispute resolution. Therefore, they will not be considered as relevant to the reason for the Notice.

In regard to the alleged violations of the park rules, I find that park rules are established to regulate common areas and do not function to define the specific terms of the tenancy agreement made between the landlord and the tenant at the start of the tenancy.

If the landlord has established park rules in accordance with section 32[*park rules*] for the manufactured home park, the park rules must be attached to the tenancy agreement and given to the tenant.

In addition section 32 of the *Manufactured Home Park Tenancy Act* states that, the landlord may establish, change or repeal park rules for governing the operation of the manufactured home park. These rules must not be inconsistent with the Act or the regulations or any other enactment that applies to a manufactured home park and can be established or changed if it is reasonable in the circumstances and if the rule has one of the following effects:

- (a) the rule promotes the convenience or safety of the tenants;
- (b) the rule protects and preserves the condition of the manufactured home park or the landlord's property;
- (c) the rule regulates access to or fairly distributes a service or facility;
- (d) the rule regulates pets in common areas.

Section 30(3) of the Regulation states that a rule established, or the effect of a change of a rule, pursuant to subsection (1) is enforceable against a tenant only if:

- (a) the rule applies to all tenants in a fair manner,
- (b) the rule is clear enough that a reasonable tenant can understand how to comply with the rule,
- (c) notice of the rule is given to the tenant in accordance with section 29 [*disclosure*], and
- (d) the rule does not change a material term of the tenancy agreement.

I find that the tenancy agreement is silent on some of the key tenancy issues that have been put forth by the landlord such as the method of payment of the rent and number of cars for parking. I find that no mention is made about storing ATVs. I find that these are issues that cannot be enforced through the “park rules” because they pertain specifically

to the individual agreement made between the landlord and the tenant and relate only to the site, not the common areas nor the park at large.

I find that some tenancy terms that should be contained within the agreement made between the landlord and the tenant, are instead incorrectly placed in the "*Park Rules*".

While I find that the tenant is required to adhere to the applicable park rules and as well as the terms of the tenancy agreement and has failed to do so on occasion, I find that the landlord has not provided sufficient proof to warrant terminating the tenancy for significantly interfering with or unreasonably disturbing other residents in the park or the landlord.

With respect to the various transgressions and park violations described, I find that in this tenancy, these have historically been handled through verbal warnings and a few written cautions issued to the tenant and the residents of the park.

I caution the tenant that if conduct violating the park rules or tenancy agreement continue to occur, it could possibly result in the successful termination of this tenancy for cause.

However, I find that there is an expectation that the landlord must be prepared to:

- investigate alleged transgressions thoroughly and in a professional competent manner,
- issue written warnings when warranted., and
- maintain accurate records of the offensive conduct and any park violations

In regard to the allegations about repeated late payment of rent, I find that the method of payment is likely the source, or a significant contributing factor, of the cause of the late payments.

For this reason, I find it necessary to order that the tenant must give the landlord post dated cheques for the remainder of this year and thereafter, provide 12 post-dated cheques to the landlord at the beginning of every year.

With respect to the second reason given on the One Month Notice to End Tenancy for Cause , that is that the tenant, "*engaged in illegal activity that is, or is likely to, adversely affect the quiet enjoyment , security , safety or physical well-being of another occupant or the landlord*", I find that no evidence was presented that would support this allegation.

Based on the evidence, I find that the One-Month Notice to End Tenancy for Cause is inadequately supported by evidence, and must be cancelled.

However, I find that the tenant has now been sufficiently warned that if the tenant, or associates of the tenant, engage in conduct seen as significant interference or disturbance of others, or should the tenant fail to pay the rent on time through the submission of post-dated cheques, this may result in termination of the tenancy.

The tenant indicated that he is aware that park rules must be followed and made a commitment to do so.

In light of the above, I hereby order that the One-Month Notice to End Tenancy dated May 9, 2014 be cancelled and of no force nor effect. I further order that the tenant pay the rent by providing the landlord with post dated cheques. Finally, I order that the parties restrict communications between them to written form and refrain from verbal interaction if possible.

The tenant is entitled to be reimbursed the \$50.00 cost of the application and may reduce the next rent payment owed to the landlord by this amount as a one-time abatement.

Conclusion

The tenant is successful in the application and the One-Month Notice to End Tenancy for Cause is cancelled. The parties are ordered to communicate in writing and implement a method of rent payment requiring the tenant to furnish post-dated cheques to the landlord.

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 14, 2014

Residential Tenancy Branch

