



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0886922 B C Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a 1 Month Notice to End Tenancy for Cause. Both parties appeared and had an opportunity to be heard.

At the beginning of the hearing the tenant referred to some evidence that had been filed by her with the Residential Tenancy Branch. The landlord confirmed that they had received a copy of that evidence. The evidence referred to was not on the file and I asked the tenant to resubmit it after the hearing. I undertook to reserve my decision until I had received and reviewed all of the tenants' evidence.

A day or so after the hearing the evidence made its' way to my desk. I have considered that evidence in the preparation of this decision.

Issue(s) to be Decided

Is the 1 Month Notice to End Tenancy for Cause dated June 23, 2014 valid?

Background and Evidence

The tenant rents a site in a manufactured home park and says she has done so for over eight years. The landlord has owned the property for about four years.

A new month-to-month tenancy agreement, effective October 19, 2010, was signed by the parties on January 31, 2014. As of the date of the hearing the monthly rent, which is due on the first day of the month, is \$365.00. The tenant is also responsible for her own electricity and propane.

The relevant portions of the tenancy agreement state:

- "6. The outside area of the unit/RV site will be kept free of clutter.
 - 8. The tenant and landlord agree to mutual consideration of peace and privacy.
- All parties, including guests, must refrain from conducting themselves in a

manner that negatively impacts the peace of the neighbourhood or property (i.e. loud music, shouting, verbal and physical alterations).”

The site is about 25’ wide and 40’ long. There is a tree at the back of the site. There is a six foot high fence on three sides of the site.

The tenant has a 28’ fifth wheel trailer parked on the site. The RVB is skirted in and there is a deck, approximately 8’ by 20’ attached to it.

On June 23, 2014, the landlord issued and served the tenant with a 1 Month Notice to End Tenancy for Cause. The reasons stated on the notice are:

- Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Tenant has seriously jeopardized the health or safety or lawful right of another occupant or landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The effective date of the notice was July 31, 2014.

The landlord’s witnesses testified that garbage removal is included in the rent. There is a dumpster in the park. Tenants are asked to put their garbage into the dumpster. The dumpster is located just a few feet from the tenants’ trailer.

The witnesses for the landlord described a continuing problem with the state of the tenants’ deck. Many of them spoke about a pile of doughnuts that spent the better part of a winter outside the front door of the trailer about two years ago. The landlord’s evidence included photographs of the deck and of the open garbage can in which little bags of dog waste were left to marinate for several very hot weeks this spring.

The landlord filed a letter from another resident of the park who stated that last year his insurance adjuster advised him that his RV insurance would be cancelled if he remained in the site next to the tenants’ as it presented a rodent and fire risk. He moved to another site in the park and was able to maintain his insurance coverage.

The landlord has given several general written notices to the tenants of the park reminding them of their obligations under the tenancy agreement. The park manager testified that he had spoken to the tenant on many occasions about the condition of her unit but had not received any cooperation from her.

All the landlord's witnesses acknowledged that since receiving the notice to end tenancy the tenant has made her greatest clean up effort ever and her deck and site are no comparable to her neighbours. They expressed doubt that this standard would be maintained in the future.

The tenant's evidence is that she has been very ill since February of 2014. A letter from her doctor confirms that she has been very ill with cancer this year and is undergoing treatments at the Cancer Clinic. She testified that since February she has been too ill to look after her deck and yard. She said she is not able to do any sweeping or twisting and this really limits what she is able to do.

The tenant also said that all of the problems in the past, such as the doughnuts and other foodstuffs on the deck, were a result of her husband's behaviours, which are the result of early dementia. Her husband has been staying in a residential facility since March or April of this year.

The tenant filed a letter from a volunteer organization which stated that she had requested help from them on May 20 and an appointment was scheduled for May 27. Because of an administrative error at the agency the appointment was missed. A new appointment was scheduled for June 25 at which time the tenant was registered for the program. Before the agency was required to do anything the tenant had been able to arrange for help from other sources.

The landlord's witnesses expressed concern about the tenant's manner of driving in the park, particularly her speed. In the hearing the tenant stated she was taking those comments to heart and promised to slow down.

In support of the allegation of harassment the landlord's witnesses testified that they found the tenant's continuous legal actions, or threat of legal action, upsetting, frustrating, and time-consuming. The only actual legal action taken by the tenant was a previous dispute to the Residential Tenancy Branch, which the landlord won. Interestingly, the previous application was heard and decided June 5, 2014. The decision would have been received by the parties a few days later.

The park manager's evidence described a series of unpleasant conversations with the tenant in which she approached him about compensation for various issues. His evidence is that in each instance, when he followed up and found there was no substance to the complaint, the matter was dropped. In her evidence the tenant said that on one occasion she merely asked if the landlord had liability insurance.

This application is the result of the action taken by the landlord and so cannot be considered in the tally of legal proceedings.

The tenant paid the August rent. The landlord accepted the rent and gave the tenant a receipt for the payment. The receipt did not include any indication that the payment was being accepted for use and occupancy only.

Analysis

In addition to the requirements of the tenancy agreement section 26(2) of the Manufactured Home Park Tenancy Act obliges a tenant to “maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas”.

After looking at all the photographs and considering all of the evidence I am satisfied that the tenant did not comply with the tenancy agreement or the Act.

This deck and site are very small. Keeping them clean and tidy should not require much time or effort. Most of the garbage that need to be carried away – such as dog litter bags, food stuff, and plastic bottles - was light and the dumpster is close by. The problem existed long before the start of the tenant’s current health difficulties. It was only at the last minute that the tenant arranged for help. I find that the landlord did have grounds for ending this tenancy when it served the 1 Month Notice to End Tenancy for Cause on the tenants.

However, the landlord accepted the August rent without providing the tenants with a receipt or any other document making clear that the rent was being accepted for use and occupancy only.

As explained in *Residential Tenancy Fact Sheet 124: Re-instatement of Tenancies*:

“Where a landlord has served the tenant with a One-Month Notice to End Tenancy, and then accepts a rent payment for the month after the tenancy was to end, the landlord should clarify with the tenant whether they have reinstated the tenancy.

When a landlord does not want the tenancy to continue, the landlord should:

1. Specifically tell the tenant that the rental payment is being accepted for the use and occupancy only and does not reinstate the tenancy; and,
2. Tell the tenant that they must move out, as required by the Notice to End Tenancy.”

As a result the landlord is deemed to have re-instated the tenancy. The 1 Month Notice to End Tenancy dated June 23, 2014 is set aside and is of no force or effect. The tenancy continues until ended in accordance with *the Manufactured Home Park Tenancy Act*.

This tenancy is being continued only because the landlord made a technical error. However, if the tenant allows her deck and site to return to its' previous state the landlord may issue and serve a new 1 Month Notice to End Tenancy for Cause. Although the tenant's health will continue to be an issue for her she is still registered with the helping agency. In its letter the agency explained that they have limited resources so it is up to the tenant to make arrangements with them well in advance.

A few words about the claim of harassment. Filing an ultimately unsuccessful application to the Residential Tenancy Branch is not harassment, whether the applicant is the landlord or the tenant. Although the resident manager, and through him the landlord, may find the conversations about potential claims irritating and time consuming, they do not comprise the type of behaviour that is described in *Residential Tenancy Policy Guideline 6: Right to Quiet Enjoyment* or the type of behaviour that I have found to be harassment in the past.

Conclusion

The 1 Month Notice to End Tenancy dated June 23, 2014 is set aside and is of no force or effect for the reasons set out above. The tenancy continues until ended in accordance with *the Manufactured Home Park Tenancy Act*. As the tenant was successful on her application she is entitled to reimbursement from the landlord of the \$50.00 fee she paid to file it. Pursuant to section 65(2), this may be deducted from the next rent payment due 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: September 03, 2014

Residential Tenancy Branch

