



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 in response to cross applications by the Landlords and the Tenant.

The Landlords Application for Dispute Resolution, filed August 26, 2014, is seeking orders as follows:

1. For an Order of Possession; and
2. To recover the cost of filing the application.

(the "Landlord's Application")

The Tenant's Application for Dispute Resolution, filed September 9, 2014, is seeking orders as follows:

1. To allow the Tenant more time to make an application to cancel a notice to End Tenancy;
2. For an Order cancelling the One Month Notice to End Tenancy for Cause issued June 24, 2014 (the, "Notice"); and
3. To recover the cost of filing the application.

The Tenant and the Landlords' agent, B.D. appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

In a case where a Tenant has applied to cancel a notice for cause, Residential Tenancy Branch Rules of Procedure require the Landlords to provide their evidence submission

first, as the Landlords have the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary Matter

As the Tenant did not apply for dispute resolution within 10 days of receiving the Notice, it is necessary to consider section 59(1) of the Act and whether exceptional circumstances exist.

The Tenant testified that the Landlords agreed she could remain in the manufactured home park for so long as it took for her to find a new lot for her manufactured home. In support of this, she introduced an email from the Landlords, sent July 4, 2014, which confirms this testimony and further provides that the Landlords were content for her to stay for so long as she removed the “persons from the site that are causing the problems”. Finally, the Landlords wrote that the Tenant was not permitted to have any guests while the Tenant was waiting to move.

Dealing solely with the issue of whether the above constitutes exceptional circumstances, I find that the Landlords’ willingness to allow the Tenant to remain in the manufactured home site until she was able to find a new lot is such exceptional circumstances warranting an extension. The Tenant relied on this assurance in failing to dispute the Notice within the 10 days and it would be unfair to deny her the opportunity to dispute the notice in such circumstances.

Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Landlords entitled to an Order of Possession?

Background and Evidence

The Landlords introduced in evidence the Manufactured Home Site Tenancy Agreement signed by both parties on April 1, 2012. The month-to-month tenancy began on May, 1, 2012 and rent in the amount of \$275.00 was payable on the first of each month.

The parties agree that the Notice was served on the Tenant indicating that the Tenant was required to vacate the rental unit on July 29, 2014.

The reason cited in the Notice was that:

- that the Tenant is repeatedly late paying rent; and
- the tenant, or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

LANDLORDS' EVIDENCE

B.D. appeared at the hearing. He stated that he was the property manager and authorized to act as agent for the Landlords. The Landlords did not appear.

B.D. testified that the Notice was issued as a consequence of several complaints about the Tenant's guests made by other occupants (including B.D.) of the manufactured home park. The nature of the complaints were that the Tenant's guests were partying until late into the night and early morning hours. B.D. confirmed that the complaints were not about the Tenant, but about her guests.

B.D. testified that three other occupants of the manufactured home park have complained about the tenants' guests. He stated that those other occupants did not wish to attend the hearing as witnesses as they did not want to be "in the middle of it".

The Landlord introduced emails from another occupant of the manufactured home park. B.D. confirmed that those emails were not provided to the Tenant prior to the hearing, nor was he prepared to have the other occupant's name disclosed at the hearing. As the Tenant was not provided this information, I declined to consider the contents of the emails as doing so would offend the principles of natural justice and deny the Tenant a right to a fair hearing.

B.D. testified that there have been eight separate incidents where the Tenant's guests have disturbed other occupants of the manufactured home park. When asked to provide dates, B.D. stated there were complaints on the following dates:

- March 2014;
- April 2014;
- May 30, 2014
- June 23, 2014 and
- July 20, 2014.

He was not able to be more specific about the March and April incidents, nor did he provide details of the other three incidents which presumably make up the eight. He did however confirm there have been no complaints since July 20, 2014.

B.D. further testified that he has called the police as a consequence of the Tenant's guests' behaviour and he believes the police were called on another occasion. He did not confirm the dates of these calls.

B.D. testified that on May 30, 2014 he attended the site to speak to the Tenant about the noise. When he arrived, the Tenant was not present, and the Tenant's daughter's boyfriend met him at the door. B.D. testified that the Tenant's daughter's boyfriend was rude to B.D. and asked him what he was going to do about the noise.

After the May 31, 2014 incident, B.D. delivered a warning letter to the Tenant and placed it in her mailbox. In this letter, B.D. identified himself as the property manager; additionally, he reminded the Tenant that her rent was due on the 1st of the month.

He further testified that July 20, 2014, an argument occurred at the Tenant's site. The police were called and two individuals were removed by the police.

TENANT'S EVIDENCE

With respect to Landlord's allegation of late payment of rent, the Tenant testified that her husband passed away in 2013 leaving her without any financial support. Her sole source of income was the amount she received for babysitting her grandchildren, and for a period of time, her daughter paid her on the 15th of the month such that the Tenant was not able to pay her rent on the 1st.

The Tenant introduced in evidence an email exchange between herself and the Landlords, dated March 1, 2014, wherein the Landlords agreed to the Tenant's request that she pay rent on the 15th of the month.

With respect to the Landlord's allegation that she or her guests have significantly interfered with or unreasonably disturbed another occupant or the landlord, the Tenant testified that she has received noise complaints, but that she has taken steps to correct the problem.

The Tenant testified that upon receiving the May 31, 2014 warning letter from B.D. she apologized to the Landlords for her son in law's behaviour. She further testified that she

and her son-in-law were unaware that B.D. was a property manager and believed he was in fact another occupant of the manufactured home park. She stated that prior to receiving the May 31, 2014 letter she had only dealt with the owners and did not know who B.D. was. In support, she introduced an email she sent to the Landlord on May 31, 2014 wherein she apologized for her son-in-law's behaviour and confirming the above.

The Tenant further testified that she has taken steps to ensure that the guests who have disturbed the other occupants in the past are not present at her manufactured home site. She stated that she has told them they are not welcome in her home.

With respect to the July 20, 2014 incident, she testified that she was not at home when her nephew and his girlfriend arrived. Her son-in-law and her daughter were at home. Her son-in-law told her nephew and his girlfriend that they were not welcome on the property and they began to argue. The police were called. The Tenant testified that when she returned home at approximately 2:00 a.m., the police were in attendance. . The Tenant stated that she asked the police to remove her nephew and girlfriend from her property and the police did in fact remove the nephew and girlfriend from the property.

Analysis

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

There is no evidence that the occupants of the manufactured home park were given any prior notice that D.M. was acting on behalf of the Landlord. I find that the Tenant and her guests were not aware that D.M. was acting as agent for the Landlord and note that no evidence was presented at the hearing that D.M. was authorized to act in such a capacity.

With respect to date of rental payments, the Landlords waived their right to enforce the strict terms of the tenancy agreement when he agreed to accept rent on the 15th of the month. Upon being notified in writing that the Landlord expected payment on the 1st, the Tenant began paying on the 1st of the month. Accordingly, I find that this is insufficient cause to end the tenancy.

The Landlords did not introduce a log book of complaints and B.D. was not able to provide specific dates with respect to some of the alleged complaints. The Landlords also attempted to introduce email evidence from one occupant which they declined to share with the Tenant. This evidence is inadmissible.

The Landlords, by way of their email dated July 4, 2014, agreed that the Tenant could stay until she found a new site for her manufactured home. The only incident which occurred after this email was the July 20, 2014 incident. I accept the Tenant's evidence that her nephew and his girlfriend were uninvited guests. I find that the person who caused the disturbance on July 20, 2014 was uninvited, and removed at the Tenant's request.

While it is clear that a tenant and their guests cannot unreasonably disturb other occupants, and that such behaviour, if repeated could lead to an end of the tenancy, I find the evidence in this case to be insufficient to establish cause to end the tenancy.

Therefore, I grant the Tenant's application to cancel the Notice.

Conclusion

The Tenant's application to cancel the Notice is granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 3, 2014

Residential Tenancy Branch

