



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with the tenants' application to cancel a notice to end tenancy. The tenants and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began on June 1, 2008. The tenants rent a site in a manufactured home park.

On August 20, 2014 the parties attended a dispute resolution hearing that convened pursuant to the tenants' application to cancel a notice to end tenancy for unpaid rent. In that hearing, the landlord retracted the notice to end tenancy for unpaid rent dated June 4, 2014.

On September 23, 2014 the landlord served the tenants with a notice to end tenancy for cause. The notice indicated that the reason for ending the tenancy was that the tenants had breached a material term of the tenancy agreement and did not correct the problem within a reasonable time after written notice to do so.

Landlord's Evidence

The landlord stated that the tenants breached the term of their tenancy agreement that prohibits building additional structures on the rental site without prior written approval. The landlord stated that there must be approval for building for safety reasons, because of underground wiring in the park. The landlord stated that in the fall of 2013 he reminded the tenants in writing that they had to have prior written consent to build additional structures. The landlord stated that the tenants said they were going to remove and replace their deck. The landlord stated that he asked the tenants about any electrical issues, and the tenants said they were going to use an extension cord to power one light on the deck. The landlord stated that later the park manager reported to the landlord that the tenants were building an addition on their site, and on August 16, 2014 the tenants were served with a letter advising them to remove the structure by September 1, 2014. The tenants did not remove the structure, and on September 23, 2014 the landlord served the tenants with the notice to end tenancy.

The landlord stated that the previous park manager did not approve the structure. In response to the tenants' evidence, the landlord stated that they never said there was going to be an increase in rent.

Tenants' Evidence

The tenants stated that they had verbal permission to build the addition. They stated that the landlord told them to get an electrical permit, and they informed the landlord that the wiring was all in order. The tenants stated that after the work was completed, the landlord then asked the tenants to pay an additional \$100 in rent for the addition. The tenants stated that they did not agree, and as a result the landlord served the tenants with a notice to end tenancy for unpaid rent. The tenants stated that they applied to cancel the notice, hired a lawyer and submitted extensive evidence for that hearing. However, at the hearing their evidence was not heard because the landlord had served a letter incorrectly.

The tenants stated that they had previously and without permission built a fence and a shed for their car on the rental site.

Analysis

Upon consideration of the evidence, I find that the notice to end tenancy for cause is not valid. I find that the landlord waived the term of the tenancy agreement requiring the tenants to receive written approval to build the addition.

The landlord's evidence was that he was aware the tenants were building something, and he asked them about electrical permits. The tenants were served with a notice to end tenancy for unpaid rent on June 4, 2014, and the tenants applied to cancel the notice. The tenants hired a lawyer and served the landlord with evidence in support of their application. The landlord then on August 16, 2014 served the tenants with their letter requiring the tenants to remove the structure. In the hearing on August 20, 2014 the landlord retracted the notice to end tenancy for unpaid rent. Then, on September 23, 2014 the landlord served the tenants with the notice to end tenancy for cause. Upon consideration of this evidence I find it more likely than not that the landlord allowed the tenants to build the addition and then demanded that the tenants pay an additional \$100 in rent for the addition.

As the landlord waived the term of the tenancy agreement requiring the tenants to obtain written approval to build the addition, the tenants have not breached this term of their tenancy agreement and the notice to end tenancy is not valid. I therefore cancel the notice to end tenancy.

As the tenants' application was successful, they are entitled to recovery of the \$50 filing fee for the cost of their application.

Conclusion

The notice to end tenancy dated September 23, 2014 is cancelled, with the effect that the tenancy continues until such time as it ends in accordance with the Act.

The tenants may deduct \$50 from their next month's rent.

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: November 26, 2014

Residential Tenancy Branch

