



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KELINA PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “notice”) issued on September 22, 2014 and to recover the cost of the filing fee from the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, 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 landlord to provide their evidence submission first, as the landlord has 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.

Issues to be Decided

Should the notice to end tenancy issued on September 22, 2014, be cancelled?
Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The tenancy began on March 1, 2008.

The parties agreed that a notice to end the tenancy was served on the tenant indicating that the tenant is required to vacate the rental site on October 31, 2014.

The reason stated in the notice to end tenancy was that the tenant has:

- Breached of material term of a tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so; and
- Tenant has assigned or sublet the site without landlord’s written consent.

The landlord testified that there are four breaches which lead up to issuing the notice to end tenancy. The first breach is that the tenant did not have permission for her son resides in the manufacture home park; the second breach is the tenant's son place a photograph of himself on social media holding a high power gun; the third breach is the tenant's son has a criminal conviction and the fourth breach is the tenant has sublet to her son.

The landlord testified on September 15, 2014, there were some roofers working in the mobile home park and the contractor informed another renter that he also lived in the park. The landlord stated that he was not aware that this person lived as an occupant in the park and went to the site where he said to be residing. The landlord stated when he attended the occupant informed him that he was the son of the tenant and was a part owner of the manufacture home. The landlord stated that the tenant did not have the landlord's permission to have her son reside in the mobile home park, which is contrary to the park rules.

The landlord testified that he then looked up the tenant's son on social media and discovered a picture of him holding a high powered gun. The landlord stated that he called the police and the tenant's son was arrested and the gun seized. However, the gun turned out to be a toy. The landlord stated this behaviour is not acceptable.

The landlord testified that the tenant's son would no longer qualify to live in the mobile home park and would not be approved as an occupant because of a criminal conviction.

The landlord testified that the tenant has also sublet a room as she collects rent from her son.

The tenant testified that she purchased the manufacture home in March of 2008, and would not have purchased the home if her son could not live with her. The tenant stated that her son was approved by the previous owner in April 2008 and has lived in the park since then and that her son has only left when attending school or when required for work.

Filed in evidence is a letter dated October 1, 2014, from BM, previous owner of the manufactured home park, which in part reads,

"[tenant] filled out the required paperwork including criminal record check. When she moved in it was just her but I recall she told us her son would be moving in shortly as well. He moved in shortly after and also had a criminal record check done. During the time we owned the Trailer Court, we had no problems with [tenant] or her son. We sold the trailer court in August 2011."

[Reproduced as written.]

The tenant testified that her son took a picture of himself with a toy gun, which belongs to her grandchild. The tenant stated the landlord over reacted by calling the police as

she believes the landlord is looking for a reason to evict them as he has a personal dislike for her son.

The tenant testified that her son did have a criminal conviction 2012. The tenant stated her son made a mistake by hitting someone, when he was in a bar trying to assist a server and is unrelated to the tenancy.

The tenant testified that she collects the amount of \$400.00 from her son, to cover the cost of his personal living expenses such as food.

The tenant testified that landlord is simply trying to evict them for any reason because they can get higher pad fees from new tenants.

The landlord responded that he did contact the previous owners of the park and they confirmed that they gave the tenant permission to have her son live in the mobile home park; however, there is no document of that agreement in their file.

Analysis

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

Upon review of the 1 Month Notice to End Tenancy for Cause, I find the notice is completed in accordance with the requirements of section 45 of the Act.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has failed to prove that the tenant has:

- Breached of material term of a tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so; and
- Tenant has assigned or sublet the site without landlord's written consent.

In this case, the landlord alleged a breach of a material term of the tenancy agreement by the tenant, for allowing her son to reside in the mobile home park without the consent of the landlord. However, I find the evidence supports that the tenant's son was granted permission in 2008, to live in the park by the previous landlord and has continued lived in the park except for short periods away, while going to school or work.

Although the landlord has no written documentation of this approval in their file, that is not the fault of the tenant or the tenant's son. I find the landlord has failed to prove the tenant has violated the Act, or tenancy agreement.

In this case, the tenant's son place a photograph on social media of himself holding a gun, the gun was a "toy gun". There was no evidence that this toy gun was used to

intimidate anyone in the park or used to commit any crime. I find the landlord has failed to prove the tenant has violated the Act, or tenancy agreement.

During the tenancy the occupant of the rental premises obtained a criminal conviction; that conviction is unrelated to the tenancy. The incident happened at least two years prior to the notice being issued and had no effect on the landlord's property and had no impact on any other occupant or the landlord in the manufacture home park. This conviction does not cancel the approval the occupant received for tenancy in 2008 and to do so would be unreasonable and unjustifiable. I find the landlord has failed to prove the tenant has violated the Act, or tenancy agreement.

Although the occupant pays the amount of \$400.00 towards his personal expenses, such as food, I find that is reasonable when people share living accommodations. This arrangement does not constitute an assignment or a sublet as defined in Residential Tenancy Policy Guideline #19. I find the landlord has failed to prove the tenant has violated the Act, or tenancy agreement.

In light of the above, I find the landlord has failed to prove the notice to end tenancy was issued for the reasons stated in the notice. Therefore, I grant the tenant's application and cancel the notice issued on September 22, 2014, and the notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

As the tenant was successful with their application, I authorize the tenant a onetime rent reduce in the amount of \$50.00 from a future rent payable to the landlord to recover the cost of the filing fee.

Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause is granted. The notice issued on September 22, 2014, has no force or effect.

The tenant is authorized a onetime rent to deduction in the amount of \$50.00 from a future rent payable to recover the cost of the filing fee from 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: November 14, 2014

Residential Tenancy Branch

