Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WOODLANDS PARK ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FF

Preliminary Issues

Upon review of the Application for Dispute Resolution and the tenancy agreement provided in the Landlord's evidence I noted that the Tenant's first name was spelled differently on the tenancy agreement than what was listed on her application. The Tenant affirmed that her legal name was not as listed on the tenancy agreement or as written in her signature on the tenancy agreement. She confirmed that it was her signature on the tenancy agreement but could not explain why she had signed her name using a different spelling. The Tenant argued that her legal name was that which was listed on her Application for Dispute Resolution.

Based on the above, and in the absence of sufficient documentary evidence to prove the spelling of the Tenant's legal name, I have amended the style of cause to show both names used by the Tenant, pursuant to section 57(3)(c) of the *Manufactured Home Park Tenancy Act*, hereinafter referred to as the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant and her son on September 12, 2014, to cancel a 1 Month Notice to end tenancy issued for cause and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Resident Manager, the Landlord, the Tenant, the Tenant's son, and the Tenant's Legal Counsel. Each party gave affirmed testimony.

The Tenant confirmed receipt of the evidence served by the Landlord. A cursory review of the documents submitted by the Landlord was conducted and the Resident Manager affirmed that he had served the Tenant the exact same documents that had been submitted as evidence to the Residential Tenancy Branch (RTB). Based on the foregoing, I accepted that the Landlord's evidence was served upon the Tenant and the RTB in accordance with the Rules of the Procedure.

The Resident Manager (hereinafter referred to as Manager) submitted that on November 17, 2014, he had received only 2 pages of a 7 page fax sent as evidence

from the Tenant. The Manager argued that the Tenant's evidence was served late and should not be considered.

The Rules of Procedure # 2.5 provides that to the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch, the applicant must submit to the Residential Tenancy Branch, a detailed calculation of any monetary claim being made; a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and copies of all other documentary and digital evidence to be relied on at the hearing.

The only exception is when an application is subject to a time constraint, such as an application under *Residential Tenancy Act* section 38, 54 or 56 or an application under the *Manufactured Home Park Tenancy Act* section 47 or 49.

Rule # 3.14 stipulates that evidence not submitted at the time of Application for Dispute Resolution that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

Rule # 3.11 states that evidence must be served and submitted as soon as reasonably possible. If an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

After consideration of the above, I find the Tenant's evidence was not served in accordance with the Rules of Procedure and therefore, it will not be considered in this decision. I did however consider the Tenant's oral submissions relating to that evidence.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1) Should the 1 Month Notice to end tenancy be upheld or cancelled?
2) Is the Tenant's son a Tenant or an Occupant?

Background and Evidence

It was undisputed that the Tenant and her husband executed a written tenancy agreement for a month to month tenancy that commenced on March 15, 1996. The Tenant's husband passed away on January 25, 2005 and the Tenant assumed the rights and obligations under the original tenancy agreement. At the outset of the tenancy the Tenant was required to pay rent of $335.00 per month for the manufactured home park site.

The Manager testified that there has been a long standing dispute which resulted from the Tenant's son (hereinafter referred to as the Son) occupying the property and not following the park rules. The Manager argued that the issues have now accumulated to the point where they issued a 1 Month Notice to end tenancy on September 4, 2014.

The 1 Month Notice to End Tenancy issued under section 40 of the Manufactured Home Park Tenancy Act (MHPTA) cited the following reasons for issuance:

The tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord

Tenant has engaged in illegal activity that has, or is likely to:

- damage the landlord's property
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the 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 Landlord and Manager clarified that the Notice was issued for the following reasons: (1) the Son is disturbing the neighbours by allowing his loud diesel truck to idle and by driving at high speeds throughout the park; (2) The Tenant and her Son engage in loud screaming arguments that disturb neighbours and the Manager; (3) the Son has pruned trees in breach of the park rules causing a liability; and (4) The Tenant has not maintained the property in accordance with the park rules as they have been storing debris in the yard and have not removed a pool liner from the ground.

In support of their position the Landlord submitted 49 pages of documentary evidence which consisted, among other things, of copies of: warning letters issued to the Tenant on September 9, 2014, August 22, 2014, August 13, 2014, February 5, 2011, and as far back as 2005; seven photographs of the site that were taken mid October 2014; and the original tenancy agreement and park/lot plan. The Manager clarified that the Tenant had not been served a separate document for Park Rules; rather, the Tenant is bound by the terms as listed on her original tenancy agreement.

It was undisputed that the Son has been residing on the property for several years. During cross examination of the Landlord and Manager Legal Counsel pointed to the Landlord's letter of February 5, 2011 which states as follows:

> *We don't have a problem with your son being here but he has to conform with our tenancy agreement ie quiet time 11pm-9am, this is a Seniors Park [sic].*

The Manager submitted that they have asked that the Son be added to the tenancy agreement but that he has never attended their office to do so. The Manager acknowledged that the Tenant had requested in the recent past that the Landlord trim the branches that hung over her trailer and that he told her that the arborist would attend to her request the next time he attended the park.

The Manager stated that two neighbours (unit # 8 and # 12) have made verbal complaints about the Tenant and her Son. He argued that these neighbours are too afraid to come forward or put their complaints in writing as they are fearful of the Son.

The Tenant testified and confirmed that she has engaged in loud arguments with her Son where they yell and scream. It was noted that those arguments occur during the daytime and not after 11:00 p.m. or before 8:00 a.m. and therefore are not a breach of any municipal by-laws.

The Tenant submitted that she had asked her Son to cut the branches, which range between 12 and 15 feet in length, when the Landlord failed to do so after she made several requests. She argued that the branches were banging on her skylight and were obstructing the removal of the porch roof. She stated that she could no longer wait for the Landlord to take action as the branches may cause damage and she needed to remove the porch roof to get her unit ready to list for sale.

The Tenant confirmed that she was aware that the Manager wanted her Son to be added to the tenancy agreement. She claimed her Son had approached the Manager on 2 or 3 occasions but the Manager told him he was busy and would attend to it at a later date.

The Son testified that in the past when he had requested branches be trimmed he had been told by the Manager to cut the branches himself. He argued that when the Landlord failed to cut the branches after their requests, he thought he could still cut them. The Son submitted that the branches were cut sometime in July 2014.

The Son submitted that he does not idle his truck anymore and in fact the truck currently needs new batteries and is not being used at this time. He stated the truck was parked in the driveway and is fully licensed, insured, and it will be operational once he installs the new batteries. The Son admitted that there was one occasion where he sped out of the parking lot when he was surprised by another vehicle coming into the park. He was insistent that he does not regularly speed in the park.

The Son and Tenant testified that the yard has now been cleaned up. There are two items remaining in the yard, a skidoo and a boat. Upon further clarification the Son stated that there was still one pile of wood that would be removed by his friend on Wednesday November 19, 2014.

The Son adduced that he has occupied the manufactured home with his mother since as far back as 2005. He stated that he left in May 2010 and has resided with his mother consistently since his return in October 2010. Counsel argued that this was a very old tenancy, ongoing since 1996, and there was no dispute that the Son is a tenant, as confirmed in the Landlord's February 5, 2011 letter.

Counsel submitted that there were a lot of allegations in the Landlord's material and for some reason the Landlord and Manager no longer want the Son to reside there. He argued that there was no evidence presented to prove material breaches and argued that arguments during daytime hours are not a breach in law.

The Landlord submitted that the final incident which set the start of the eviction process was the incident of the Son trimming the tree branches. It was noted that neither the Landlord nor the Manager was aware that the branches were cut until the Landlord saw the branches lying in the compost bin. The Manager confirmed he had told the Son that he could cut cedar branches and argued that the Tenant had ever put her request for maintenance on the Redwood tree in writing.

In their final summation, Counsel submitted that the Landlord has failed to provide evidence to support the major complaints; the Manager gave the Tenant prior permission to cut down branches; there has been no noise after 11:00 p.m.; and the yard has since been cleaned up.

In closing, the Landlord submitted that the Son had been told twice, not to cut the branches; the Son is not following park rules; and as of the time of this hearing the yard has not been fully cleaned up.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Upon review of the February 5, 2011 letter issued by the Manager, I do not accept that the statement "*We don't have a problem with your son being here but he has to conform with our tenancy agreement ie quiet time 11pm-9am, this is a Seniors Park"* defines the Son as a tenant. Rather, I find the statement simply indicates there was no problem with the Son occupying the property at that time.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where a tenant allows a person who is not a tenant to move into the premises, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree and enter into a written tenancy agreement to include the new occupant as a tenant.

Based upon the aforementioned, and in the absence of a written tenancy agreement that names the Son as a tenant, I find the Son meets the definition of an occupant and is not tenant.

The Tenant in this matter is J.H., who bears the burden of the obligations of her tenancy under the MHPTA and it is the Tenant who is responsible for the behaviors and actions taken by her guests and occupants whom she allows on the property.

In response to the Tenant's argument that the Landlord provided insufficient evidence to support the eviction, I accept that in the absence of written complaints from neighbors, there was insufficient evidence to prove the Tenant or her Son had disturbed the quiet enjoyment of other occupants or tenants. With respect to the undisputed evidence that the Tenant and Son engage in screaming arguments, I accept the Manager's oral testimony that the arguments are so volatile that they are disturbing to hear, regardless of the time of day they occur. That being said, if there was documentary evidence, such as written complaints, to support that other tenants were being disturbed by the screaming arguments, the arguments would constitute a breach of quiet enjoyment to other tenants.

I note that between 2005 and 2011 the Landlord had issued the Tenant warning letters regarding maintenance and behavior issues. That being said, despite the Landlord issuing a 1 Month Notice on March 3, 2011, the Landlord took no formal action to enforce that 1 Month Notice back in 2011. No warning letters were submitted as evidence that were dated between March 2011 and August 12, 2014.

It was undisputed that the Tenant had been issued 3 additional warning letters dated August 13, 2014, August 22, 2014 and September 9, 2014. I note that the August 13, 2014 letter indicated that failure to comply by having the Son move out would result in the issuance of a Notice of Termination. I note that neither the August 22nd nor the September 9, 2014 subsequent letters indicated that the Tenant would be faced with eviction; rather those letters indicated the Tenant need to pay a fine of $500.00.

Upon review of the Manager's oral testimony I found that he provided additional inconsistent information relating to whether the Son could remain in the unit and whether the Son had given permission to trim branches from the trees on the site. I further note that the information that was being told to the Tenant and her Son from the Landlord was different than the information being told or presented to them by the Manager.

Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency.

Based on the above, I find the Landlord and Manager provided inconsistent messages to the Tenant that did not consistently inform the Tenant that should would be evicted if she did not rectify or resolve the matters. Rather the pattern has been that warnings

would be issued and no further actions would be taken. Therefore, I find the Landlord was estopped from ending this tenancy based solely on written warnings issued several years in the past, the warning of August 13, 2014, or the issuance of the September 4, 2014 1 Month Notice. Accordingly, I uphold the Tenant's application and cancel the 1 Month Notice.

The Tenant has succeeded with their application; therefore, I award recovery of the **$50.00** filing fee.

After consideration of the totality of the events discussed, I now caution the Tenant that if she fails to comply with the terms of her tenancy, from the date of receipt of this Decision forward, and another eviction notice is issued in the near future, this Decision will form record of these events and would form part of the Landlord's case should it again come before an arbitrator for consideration.

Conclusion

I HEREBY CANCEL the 1 Month Notice to end tenancy issued September 4, 2014, and the Notice is of no force or effect. This tenancy continues until such time as it is ended in accordance with the Act.

The Tenant may deduct the one time award of **$50.00** from her next rent payment as full recovery of her filing fee.

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 20, 2014

Residential Tenancy Branch