



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING MGMT. SERVICES 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 One-Month Notice to End Tenancy for Cause dated October 22, 2014, purporting to be effective November 30, 2014.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and make submissions during the hearing. I have considered all of the evidence properly served and the verbal testimony given by the parties during the hearing.

Issue(s) to be Decided

Should the landlord's One-Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence: One-Month Notice for Cause

The tenancy began approximately 34 years ago. The current rent is \$314.00. No written tenancy agreement exists.

The landlord testified that the tenant's rent is due on the first day of each month. The landlord testified that since January 2009 the tenant has never paid rent on or before the first day of the month and the record will confirm 74 late payments, over half of which were paid after the 5th day of the month.

The landlord testified that the tenant has been cautioned repeatedly that the rent must be paid on time. The tenant has been charged late payment fees and in fact has been served with 43 separate 10-Day Notices to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not dispute any of the 10-Day Notices but paid the arrears in time to cancel each notice. The landlord pointed out that this fact clearly indicates that the tenant was informed that rent must be paid on the first.

The landlord acknowledged that the tenant was already living in the park when they took over. The landlord submitted a copy of the tenant's rental ledger confirming that the tenant paid the rent after the first day of each month for the past few years.

The landlord pointed out that, despite the tenant's knowledge that rent is due on the first day of each month, he still persists in paying late. The landlord feels that the tenant's application to cancel the 1-Month Notice to End Tenancy for Cause should be dismissed and an order of possession should be issued to the landlord.

The tenant acknowledged that he has been paying his rent a few days after the first of each month. The tenant testified that his tenancy agreement when he first took occupancy in the park permitted him to pay the rent after the first day of the month. The tenant testified that for the past 3 decades he generally paid his rent sometime in the first week of each month. The tenant stated that there was no agreed-upon term in his original agreement requiring him to have his rent paid by the first day of each month.

The tenant pointed out that the history of his payments support this claim. The tenant does not agree with the landlord's claim that he has been paying "late".

The landlord's position is, in the absence of a written tenancy term permitting the tenant to pay his rent on a specific day of the month, the Act provides that rent is due on the first day of each rental period. The landlord argued that the tenant has no proof that this disputed term was included in the original verbal tenancy agreement. Therefore, according to the landlord, the rightful payment date should default to the date for payment put forth by the Act.

The landlord pointed out that the tenant has never discussed the matter with the landlord and never overtly disputed the landlord's position that rent is expected on the first day of each month. The landlord testified that all other tenancies in the park are set up for payment on the first day of the month. The landlord testified that the tenant has the option of signing a written tenancy agreement but has not done so.

Analysis:

The burden of proof is on the landlord/respondent to justify that the reason for the Notice to End Tenancy.

In regard to the issue of repeated late payment of rent, I find that the testimony and evidence of both parties confirm that the tenant has been consistently paying his rent after the first day of each month.

I accept that the landlord has made their position clear to the tenant that, as far as the landlord is concerned, the rent is due on the first day of each month and that payment received thereafter is considered as “late” payment.

I find that the tenant’s argument that his verbal tenancy was set up to permit payment of rent after the first day of the month appears to be supported by the fact that the records confirm the rent has continually been paid after the first day of each month.

Section 20 of the Manufactured Home Park Tenancy Act specifically requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

Under section 40 of the Act, repeated late payment of rent is a valid basis upon which the landlord may end the tenancy for cause. The landlord has burden of proof to verify that the rent was paid after the due date agreed to in the tenancy agreement.

This dispute is caused by the two parties each alleging a different due date for payment of rent under the original tenancy agreement.

According to the Act, oral terms contained in verbal tenancy agreements may still be recognized and enforced. Section 1 of the Act, defines “tenancy agreement” as follows:

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities.”

I find that this tenancy agreement was only a verbal agreement and was entered into several years prior to this particular landlord taking over the park.

I find that, if the tenancy agreement originally permitted the tenant to pay the rent after the first day of each month, this term cannot be unilaterally changed by the landlord.

Section 14(1) of the Act states that, “A tenancy agreement may not be amended to change or remove a standard term”. However, some tenancy terms can be changed but this requires a mutual agreement.

In this case I find that the tenant has relied on a purported verbal tenancy term to justify paying the rent after the first day of the month and the landlord is challenging the existence of such a term.

In the case of tenancy terms that must be interpreted, I find that section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if:

- a) the term is not consistent with the Act or Regulations,

b) the term is unconscionable, or

c) the term is not expressed in a manner that clearly communicates the rights and obligations under it. (my emphasis)

In presenting their respective positions on the topic, I find the evidence from the parties consisted only of the following:

- Disputed verbal testimony from the parties with respect to the due date for payment of rent under the agreement or the Act,
- Evidence that the landlord had issued numerous 10 Day Notices to End Tenancy for Unpaid Rent when the tenant failed to pay rent by the first day of each month,
- A tenant ledger confirming an extensive history of the tenant consistently paying the rent *after* the first of the month.

In a dispute, I find that, when one party provides their version of the facts in one way and the other party provides an equally probable alternate version of facts creating a “stalemate”, there may be an expectation that the arbitrator will have to side with one party’s version and reject the other party’s position.

However, I find that when the evidence consists only of disputed verbal testimony, the party carrying the burden of proof is unlikely to succeed without further evidence to prove their case. The reason this is so is because the two parties are not on equal ground from the outset of the dispute, being that one of them carries an added burden to prove their case.

In this instance, I find the onus solely on the landlord to prove that both parties had agreed from the very beginning of the original tenancy relationship that the day of the month rent is due was agreed by both parties to be the first day of each month. I find that the landlord has failed to sufficiently meet their burden of proof in this regard.

That being said, I find that the alleged verbal tenancy term put forth by the tenant is also not sufficiently clear under section 6(3) of the Act, excepted above. For this reason, I find that, for enforcement purposes, there must be a finding with respect to the specific day that the rent must be paid under this tenancy agreement going forward.

Section 55(1) of the Manufactured Home Park Tenancy Act gives the arbitrator authority to determine disputes and:

“any related matters to the dispute that arise under this Act or tenancy agreement”.

Further, section 55(2) provides that an arbitrator:

“may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.”

Given the above, I find it necessary to make a finding to clarify the tenancy term now under dispute. Therefore, I order that from this day forward, the tenancy agreement between this landlord and this tenant contains the following clear term:

“Rent is due and payable by the tenant to the landlord on the first day of each rental period, that being the first day of each month.”

Both the tenant and the landlord are now on notice that the above term is an enforceable term in the tenancy agreement between this landlord and this tenant.

The tenant acknowledged during the proceedings they are aware that paying the rent late is a serious violation of both the Act and the tenancy agreement and if repeated will likely result in termination of the tenancy under section 40 of the Act.

Based on the evidence, with the above clarification and caution, I hereby grant the tenant's request to cancel the One-Month Notice to End Tenancy for Cause dated October 22, 2014.

The tenant is not entitled to be reimbursed the cost of their own application.

Conclusion

I hereby cancel the One-Month Notice to End Tenancy dated July 31, 2012. In doing so, I caution the tenant that repeated late payment of rent is clear justification under section 47 to terminate the tenancy.

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: December 04, 2014

Residential Tenancy Branch

