



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREEN BAY LANDING INC. & THOMAS STARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RR

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy and to recover the filing fee for this proceeding.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on November 9, 2014. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

At the start of the conference call the Arbitrator explained that the Tenant had sent in late evidence that was received on December 8, 2014 by the Residential Tenancy Branch. This evidence is considered a late submission as supporting documentation for a hearing must be received by the Branch and the other party in the dispute 5 days prior to the hearing. The Arbitrator asked the Landlord if they had received the evidence and if they have reviewed it. The Landlord said he has not received the Tenants evidence package. Consequently the Arbitrator disallowed the Tenants’ late evidence package from the hearing due to late filing.

Issues(s) to be Decided

1. Are the Tenants entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started in March, 2009 as a month to month tenancy. Rent is \$472.24 per month payable in advance of the 1st day of each month.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated October 27, 2014 by personal delivery on October 27, 2014. The Effective Vacancy Date on the Notice is November 30, 2014. The Tenants are living in their manufactured home on the rental pad in the park and the Landlord said he wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy for Cause are that the Tenant has significantly interfered with or unreasonable disturbed another occupant of the park or the landlord, the Tenants have seriously jeopardizing health or safety or lawful rights of another occupant or the landlord, and the Tenants have breached a material term of the tenancy agreement.

The Landlord said there were a number of incidents that lead to the issuing of the 1 Month Notice to End Tenancy for Cause and they are as follows:

1). The Tenant has harassed and aggressively shouted at the Landlord when the Landlord has requested the Tenant to pay the quarterly water utility bills. The Landlord said the Tenant has made inappropriate and vulgar remarks to him and the Tenant has instructed the landlord to pass these remarks on to the owner of the property. The Owner of the property confirmed the Landlord's testimony and said that he has been told about the remarks and that the Tenants have been disruptive and abusive to the Landlord and other tenants.

The Tenant said that he has protested the water bills, as not all the park tenants pay water utilities, but he said he has never been abusive or vulgar to the landlord.

2). The Landlord continued to say that he submitted three witness statements illustrating the Tenants aggressive and abusive behaviour. The first statement is from another tenant of the Park "B.C." who is the neighbour of the Tenants. The landlord said that occupant B.C. is also a witness to the hearing. Witness B.C. was affirmed and gave the following testimony. The Witness B.C. said there have been issues with the Tenants since they moved in but things escalated in the spring of 2012. The Witness said there was an incident with her husband and the Tenant when her husband was trimming their hedge and her husband went on the Tenants' driveway. The Witness said the male Tenant shouted aggressively at her husband and her husband was threatened by this. The male Tenant said he asked the Witness' husband to leave his drive way but he was not aggressive or threatening to his neighbour. The Landlord said he talked to both parties about this incident and he believed the male Tenant was the aggressor in this situation. The Witness B.C continued to say that the female Tenant had backed her car up like she was going to run over the Witness' dog and then the Witness said the female Tenant laughed at her. The female Tenant said she did not do this and she likes dogs and she has two of her own. The third incident the Witness said was when the Tenants started having fires on their back deck area. The Tenant said they were told not to have fires and the Tenant said they purchased a propane fire pit which conforms to the park rules. The following night the Tenants were using their propane fire pit and the Witness phoned the fire department. When the firemen came the propane fire pit was not a safety issue and the firemen left. The Landlord said the firemen told him they

would not come back without the police being in attendance as they are not equipped to deal with conflict situations.

The Tenants Counsel said the Witness testimony is questionable as she first said there were issue from when the Tenants first move in and then she said the issues began in spring of 2012, 3 years after the Tenants move in. As well the Tenants' Counsel said the Witness was wrong about calling the fire department. The Tenants' Counsel said that the Witness may be trying to create issues so that the Landlord would evict the Tenants. The Tenants Counsel suggested that the Landlord has taken the Witness' side in these neighbour disputes and is now trying to evict the Tenants on unproven allegations.

3). The Landlord submitted two other written statements to support the Landlord's claim that there were altercations with the Tenants. One incident was about the Tenants acting inappropriately to a Park occupant walking his dog off lease and the other written statement says the occupant/ writer of the statement witnessed the male Tenant verbally abusing the Landlord. The male Tenant denied abusing the Landlord.

All parties agreed there have not been any physical altercations to date and the disputes have only been verbal. The Landlord and Witness said the Tenant has used aggressive and abusive language with the Landlord and other occupants of the Park. The Tenants said they have not been aggressive or abusive to other residents of the Park or the Landlord.

Further the Landlord said that the Tenants have breached a material term of the tenancy agreement and have not corrected that breach even after being issued two warning letters. The Landlord said the breach was breaking the General Conduct Rules in the Park Rules that are agreed to by all tenants at the start of their tenancy. It is a material term of the tenancy agreement because if the tenants do not agree to the rules the parties will not enter into a tenancy agreement. The Landlord said the first warning letter was issued on December 13, 2013 by posting it on the Tenants door. That warning letter referred to utilities payment, no post-dated cheques, a lean to constructed with without authorization and a request for the Tenants not to respond to this warning in a "violent or threatening" manner as the Tenant has in the past.

The second warning letter was issued on March 4, 2014 by posting it on the door of the Tenants unit. This warning letter was specifically about the male Tenant's behaviour. The warning letter said "this is the final notice that will be issued regarding these horrendous, violent and aggressive actions towards other tenants, neighbours and myself" "ANY FURTHER BREACHES OR INFRACTIONS of the park rules or the Tenancy Agreement will result in the loss of your tenancy and your subsequent eviction from this Park; as well as any legal or criminal charges warranted, may be levied against you according to law."

The Owner of the Park read the section of the Park Rules for the hearing. The Owner said under the general conduct category tenants have the right to quiet enjoyment and if tenants engage in violent, abusive or threatening behaviour that will be considered a breach of a material term of the tenancy agreement and the tenant will be evicted.

The Tenants said they did not receive either of the two warning letters so they did not know this was happening.

The Landlord said he posted both of these letters on the door of the Tenants' unit like he has with other documents that he has given the Tenants.

The Tenants said maybe one of the other tenants removed the warning letters. The Tenants said they did not receive the warning letters.

The Tenants' Counsel said in closing that the witness testimony is very questionable because of contradictions in her statements, the Tenants believe the Landlord is siding with the other tenants in these neighbour disputes, the Tenants did not receive the warning letters and the reasons the Landlord gave for issuing the Notice to End Tenancy are not proven.

The Landlord said in closing that they have followed the process and they have provided written and verbal evidence that the Tenants have been aggressive and abusive to the Landlord and other tenants of the Park. They provide two warning letters to the Tenants to correct their behaviour and the Tenants have not corrected the situation; therefore this is a breach of a material term of the tenancy agreement.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenants and the Landlord and other tenants in the Park. The Landlord has provided evidence and witness testimony indicating there are disputes between the neighbours in the Park and that the Landlord believes the Tenants have been abusive to the other tenants of the Park and the Landlord. The Landlord has also provided copies of two warning letters that are essentially about the Tenants aggressive and abusive behaviour. The Landlord rightfully says that this is a material breach of the tenancy agreement and the Tenants did not correct the breach in a reasonable time period.

The Tenants deny that they have been aggressive and abusive to anyone and the Tenants said they did not receive the Landlords warning letters.

First the Landlord has indicated the first two reasons for eviction are: seriously interfered with or disturbed other occupants or the landlord and seriously jeopardized the health or safety and lawful rights of other occupants and the Landlord. In Section 47 of the Act uses language which is written very strongly and it's written that way for a

reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant. Both parties agreed that no physical violence has taken place and no police charges have been made against the Tenants. The disputes are emotional and unpleasant but have they reached the level of seriousness to warrant an eviction? In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. I find the disputes between the Tenants and the other occupants in the Park are not reason enough to support the Notice to End Tenancy for Cause.

Secondly the Landlords claim that the Tenants have breached a material term of the tenancy agreement has merit as the Landlord has given affirmed testimony and supplied a corroborative witness statement that the Tenants have been aggressive and abusive to him and as a result he issued two warning letters. The warning letters requested the Tenants to correct their behaviour. The Landlord said the Tenant did not correct their behaviour towards the Landlord; therefore the Landlord has a reasonable claim that the Tenants have breached the tenancy agreement and Park Rules.

The Tenant responded to this with affirmed testimony that he did not speak aggressively and abusively to the Landlord and the Tenants said they did not receive the warning letters.

There is no corroborative evidence that proves the Tenants were served the two warning letters and the burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent's that burden of proof is not met. Consequently I find that it is unclear if the Tenants received the warning letters and if they did not then they were unaware that they had breach a material term of the tenancy and were endanger of being evicted. I find that because the Landlord has not proven service of the warning letters the Landlord has not established grounds to support the reason of a breach of a material term of the tenancy agreement to support the Notice to End Tenancy for Cause dated October 27, 2014. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date October 27, 2014 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement,

Further I order that the Tenants are formally notified by the proceedings of this hearing and the written submissions of the Landlord that they could be in violation of the Park Rules which could constitute a material breach of the tenancy agreement. As the Tenants said they did not receive the warning letters, I order the Landlord to re-issue the two warning letters to the Tenants and I order the Landlord to serve the letters to the Tenants by registered mail or in person. If the Landlord serves the letters by registered mail the warning letters are deemed to be served to the Tenants 5 days after mailing. The Tenant then has a reasonable period of time to correct the material breach of the tenancy agreement.

As the Tenants have been successful in this matter I order the Tenants to recover the \$50.00 filing fee for this proceeding by deducting it from the January, 2015 rent. The January, 2015 rent adjusted to \$422.24.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated October 27, 2014 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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 11, 2014

Residential Tenancy Branch

