



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant's Agent on May 29, 2015 seeking to cancel a 1 Month Notice to end tenancy issued for cause, for other reasons pertaining to the 1 Month Notice, and to recover the cost of the filing fee from the Landlords for this application.

The hearing was conducted via teleconference and was attended by the corporate Landlord's Agent, hereinafter referred to as Landlord and the Tenant's Agent, hereinafter referred to as Agent. Each person gave affirmed testimony.

The application listed two respondents, the Landlord and the corporate Landlord's name. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

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.

Residential Tenancy Rule of Procedure 3.14 provides that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the RTB not less than 14 days before the hearing.

The Landlord confirmed receipt of documents served as evidence by the Agent excluding the tenancy agreement and the photographs. The Agent confirmed that he had not served the Landlord with copies of his photographs or the tenancy agreement and noted that the tenancy agreement as submitted in the Landlord's evidence.

Based on the forgoing, I find the Agent's photographs were not served upon the Landlord as required by Rule of Procedure 3.14. Therefore, I did not consider the Agent's photographs or the tenancy agreement in making this Decision. I did consider the Agent's oral testimony about what was shown in the photographs.

The Agent confirmed receipt of the documents and photographic evidence submitted by the Landlords.

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. Following is a summary of the submissions 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 for cause issued May 11, 2015 be upheld or cancelled?

Background and Evidence

The Agent submitted a written document dated May 27, 2015 which was signed by the Tenant and states at the second sentence:

I authorize [Agent's name] to advocate for me in this matter.

[Reproduced as written excluding the Agent's name]

The undisputed evidence was that on May 1, 1995 the Tenant entered into a written tenancy agreement and signed receipt for a copy of the Park Rules and Regulations. The tenancy was effective July 28, 1995 and at the start of the tenancy rent was payable in advance of the first of each month in the amount of \$252.00.

The Landlord testified that they did not have any problems with the Tenant until the Agent, the Tenant's son, and his wife arrived with a truck and trailer on May 1st or 2nd, 2015. The Landlord submitted that the Agent told them he and his wife were going to be staying in their trailer for a few months while they assisted the Tenant in repairing his manufactured home and with cleaning up his yard.

The Landlord argued that they have received three complaints about the Agent's aggressive pit bull type dog, as well as complaints about the second trailer being parked on the site without the Landlord's permission. They have also received complaints about the amount of debris that was in the yard covering and restricting access to the three water main shut off valves. The Landlord argued that they recently had a water leak and they had to shut down the water for the entire park because they could not get access to the shut off valves in the Tenant's back yard that could have shut off the water at the affected trailers instead of the entire park.

The Landlord pointed to the Park Rules and Regulations submitted into his evidence and read several sections into evidence. The following were amongst the sections highlight in the Landlord's evidence:

10. The only vehicles to be kept within the park shall be passenger vehicles in good repair and appearance. Campers, small boats, small trailers etc. are subject to the approval of the management...

11. Vehicles shall be properly parked in the provided bay drive-ways.

14. Only one small, quiet, normally domesticated dog or cat is allowed. The pet must be either fenced or leashed at all times. The tenant shall, if the management deems it necessary for the peace and quiet of the neighborhood remove any pet from the premises.

22. The tenant shall maintain the area rented to him in good order and condition satisfactory to the management...

24. No subletting or renting except where express written consent has been given by the Landlord.

[Reproduced as written]

The Landlord testified that on May 5, 2015 he served the Tenant a warning letter telling him to remove the Agent's trailer within 48 hours and demanding proof of ownership of the other trailer (a 5th wheel trailer) that was parked in the Tenant's back yard. A second written warning was to the Tenant on May 11, 2015 regarding the Agent's trailer, the Agent's behaviour, and the Agent's large dog. Copies of the warning letters and other tenant's complaints were submitted into evidence along with a copy of a letter signed by the Park Tenant's Association supporting the eviction.

The Landlord submitted that on May 11, 2015 they also served the Tenant with a 1 Month Notice to end tenancy. A copy of the Notice was submitted into evidence which listed the following reason for issuing the Notice:

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

[Reproduced as written]

The Agent testified and confirmed that he and his wife arrived at the Tenant's on or around May 1, 2015 with a trailer and a truck. He denied that he told anyone that he would be residing in the trailer; rather, he submitted that they had been staying inside the Tenant's home while he was assisting the Tenant in repairing his home and cleaning up his yard.

The Agent argued that the Landlord told the Tenant he would have until May 11, 2015 to have the 5th wheel trailer removed from his back yard. However, at about 9:00 a.m. on May 11, 2015 the Landlord showed up and served the Tenant with an eviction Notice. The 5th wheel trailer had been scheduled to be removed later that same day and was in fact removed on May 11, 2015.

The Agent argued that he took the Tenant, the truck, and the trailer camping for a period between May 22 and June 26, 2015. The Agent stated that they returned to the Tenant's home for a few days until June 30, 2015 when a flood occurred. The Agent stated that he served the

Landlord and the Tenant's Association with copies of the proof of ownership of both the trailer and the truck which clearly show both vehicles to be owned by the Tenant.

The Agent testified that on July 1, 2015, he and his wife got possession of their rental home that is located in a nearby city about 20 minutes away, so they are no longer residing with the Tenant. The Agent submitted that he is still assisting the Tenant in cleaning up the debris from his yard so he is still there on a regular basis.

The Agent confirmed that he continues to bring his dog with him when he attends the Tenant's home. He argued that he does not leave his dog home alone and when he is at the Tenant's and he is not an aggressive dog. The Agent asserted that the dog does bark if someone knocks on the door but that does not mean he is aggressive.

The Landlord pointed to the Agent's written submission pages 1 and 2 which states: "... our plans were to stay with my Dad for 2 or 3 months, while we look for a place to buy" and argued that this was proof of the Agent's intentions were to stay with the Tenant in the trailer for several months.

The Landlord confirmed that the 5th wheel trailer had been removed from the Tenant's lot after service of the eviction Notice. He argued that the Tenant has not formally requested permission to store the new trailer on his site; therefore, the Landlord could not consider any agreement today that would allow that trailer to stay at this time.

The Landlord asserted that these problems occurred because the Agent arrived and announced that he would be living in the trailer, demanding things and telling the Landlord and his staff what was going to happen instead of the Tenant asking for permission, as required by the Park Rules and Regulations.

During the course of the hearing the parties were given the opportunity to try and settle these matters. Unfortunately they were too far apart and the hearing reverted to the arbitration.

Analysis

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

Upon review of the 1 Month Notice to End Tenancy issued May 11, 2015 I find the Notice to be completed in accordance with the requirements of section 45 of the Act and I find that it was served upon the Tenant in a manner that complies with section 81 of the Act.

Where a Notice to End Tenancy comes under dispute, the Landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the Landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

The undisputed evidence was the Tenant signed receipt of the Park Rules and Regulations on May 1, 1995 when he entered into the tenancy agreement. As listed above, the Park Rules and Regulations stipulate that trailers may be kept within the park subject to the approval of the management. The Rules and Regulations also stipulate that only small pets are allowed in the park and no subletting or renting is allowed except where express written consent has been given by the Landlord.

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 to enter into a tenancy agreement to include the new occupant as a tenant.

I find the Agent to this dispute does not meet the definition of a tenant; rather he is considered a periodic occupant of the site during his occupancy between May 1, 2015 and June 30, 2015. There was not a tenancy agreement in place between the Agent and the Landlord which means the Agent had no rights under the Act.

Based on the above, I find the Landlord had the right to communicate with the Tenant regarding issues relating to the Tenant's tenancy prior to May 27, 2015. That being said, the Agent submitted written documentation dated May 27, 2015 which granted him authority to act as the Tenant's Agent in the limited capacity to deal with these matters which are currently before me.

Policy Guideline 8 to the Act defines a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. To determine the materiality of a term during a dispute resolution hearing, the Arbitrator will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

It was undeniable that the relationship between the Agent and the Landlord was argumentative and at times confrontational. The matters regarding the tenancy escalated from being about the presence of the new trailer to complaints about the Agent's dog, a marijuana grow operation, and the condition of the Tenant's yard.

The Tenant was served a warning letter on May 5, 2015 which required the removal of the Agent's trailer within 48 hours and proof of ownership of the 5th wheel trailer. On May 11, 2015 the Tenant was served an eviction Notice and a second warning letter about the Agent's inappropriate behavior and the issues regarding the Agent's large dog. The 5th wheel trailer was removed later that same day.

Based on the foregoing, and by the Landlord's own testimony, the issuance of the 1 Month Notice was more to do with the Agent arriving with the truck and trailer announcing that he would be occupying the trailer in the Tenant's driveway for a few months without receiving prior permission from the Landlord and the resulting acrimonious relationship rather than a material term of the tenancy agreement regarding two trailers, the condition of yard, and the dog.

If issuance of the 1 Month Notice was truly about a material term of the tenancy agreement it is reasonable to conclude that the Landlord would have taken action about the condition of the yard and the presence of the 5th wheel trailer prior to the Agent's arrival in May 2015.

As of this hearing date the undisputed evidence was the 5th wheel trailer has been removed, the Tenant's yard has had some clean up giving clear access to the water shut off valves, and the Agent is no longer residing at the Tenant's site. In addition, I accept that the Agent served the Landlord with proof of the Tenant's ownership of the truck and trailer.

At the time the 1 Month Notice was served, the Tenant had only been issued one previous written warning which related only to the new trailer and the existing 5th wheel trailer which had been in the Tenant's back yard for an undetermined amount of time. Therefore, based on the totality of events and the above evidence, I find there to be insufficient evidence to uphold the May 11, 2015, 1 Month Notice on the grounds that the Tenant failed to correct a breach of a material term. Accordingly, I grant the Tenant's application and the 1 Month Notice is hereby cancelled.

Section 65(1) of the Act stipulates that the director may order payment or repayment of a fee under section 52 (2) (c) *[starting proceedings]* or 72 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

Section 60 of the Act states:

Without limiting the general authority in section 55(3) *[director's authority]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 65(1) of the Act.

Section 26 of the Act, provides, in part:

2) *A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas.*

(3) *A tenant must repair damage to the manufactured home site or common areas that is caused by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant.*

Section 32(1) of the Act stipulates that in accordance with the regulations, a park committee, or, if there is no park committee, the landlord may establish, change or repeal rules for governing the operation of the manufactured home park.

As per the foregoing, I caution the Tenant that if it is verified or proven by the Landlord that he or any guest he has allowed onto his site fails to comply with the tenancy agreement or Park Rules and Regulations in the future, this decision could form part of the Landlord's case should it again come before an Arbitrator for consideration.

Conclusion

The Tenant has been successful with his application and was awarded recovery of his \$50.00 filing fee.

The 1 Month Notice issued May 11, 2015 was cancelled. That Notice is of no force or effect and the tenancy continues until such time as it is ended in accordance with the Act.

Section 65(2)(b) of the Act stipulates in part that if the director orders a landlord to pay an amount to a tenant the tenant may deducted that amount from any rent due to the landlord.

The Tenant has been issued a Monetary Order for **\$50.00**. This Order is legally binding and must be served upon the Landlord. The Tenant may deduct the amount from any future rents that a payable to the Landlord, in accordance with section 65(2)(b) of the Act, or the Tenant may request the Landlord issue payment to the Tenant.

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: July 21, 2015

Residential Tenancy Branch

