



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Forest Glade Mobile Home Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Manufactured Home Park Tenancy Act ("Act"). The tenant applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause ("Notice").

The tenant and the landlord's agents attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the tenant confirmed receipt of the landlord's evidence; however, the tenant submitted that she had not sent her additional documentary evidence to the landlord. I have therefore excluded the tenant's additional evidence from consideration, due to her failure to comply with section 3.14 of the Dispute Resolution Rules of Procedure (Rules). I have considered the tenant's original evidence included with her application.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Rules; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

This tenancy began in August 2008.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant the Notice. The Notice was dated July 15, 2015, and listed an effective end of tenancy of August 31, 2015.

The causes listed on the Notice alleged that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's relevant documentary evidence included a written submission supporting their position in this matter, photographs in support of their allegations, references to emails between the landlord/owner, "ES" and the tenant, some copies of email communication between the ES and the tenant, and references to and letters of complaints made by other tenants in the manufactured home park.

It is noted that in the landlord's documentary evidence, there was a list of names of other tenants in the park who would be serving as witnesses testifying on behalf of the landlord. The landlord's agent submitted that he understood the witnesses would be calling in; however, no other witness appeared for the landlord and the landlord's agent expressed dissatisfaction that they did not, as promised. It is further noted that ES was not present, due to a medical appointment.

In support of issuing the tenant the Notice, the landlord's agent submitted that the tenant has violated the water restrictions as to watering of her lawn, plants, shrubs, and trees. The landlord's agent explained that due to the draught conditions in their area, the park was placed on first a "phase 3" restriction by the municipality, and then the 24 sets of tenants in the park were notified that they would be on a "phase 4" water restriction. In other words, only potted plants and vegetables could be watered. The landlord's agent submitted that the tenant has violated this restriction, and as the only source for water in the park is the well belonging to the landlord, the tenant has placed the other tenants in jeopardy of running out of water.

The landlord submitted that other tenants have called to him complaining that the tenant has violated the water restriction and that the tenant has been seen skulking about the park, looking at the other tenants' homes. The other tenants are fearful of reprisals from the tenant, according to the landlord's agent.

The landlord's agent submitted that as the tenant failed to cooperate with the water restrictions, it was necessary to issue the Notice.

In response to the landlord's Notice and evidence, the tenant submitted that in an email on July 12, 2015, she asked for and received permission from ES to water for 1 hour, twice a week and that she has not violated this restriction. The tenant submitted further that on July 14, 2015, she only watered for 35 minutes, has not watered since, and put up her water hoses.

The tenant submitted that perhaps the other tenants in the park did not know she had permission to use the water for 1 hour twice a week, and that she only watered when

she had permission. The tenant submitted that she complied with the landlord's notice of July 9th, within a reasonable time after receiving it as she had been away for several days.

The tenant denied interfering with the other tenants, stating that lives at one end of the park and the entrance is at the other end, requiring her to walk past the other homes to leave or check her mail.

Analysis

Where a Notice to End Tenancy is disputed by the tenant in time, the landlord had the burden to prove that the tenancy should end for the reasons indicated on the Notice. In this case, the Notice dated July 15, 2015, was disputed by the tenant with her application made on July 22, 2015.

In considering the evidence of the landlord, I found I could not rely on the landlord's evidence to support the Notice. The most crucial evidence was missing, and that was testimony from ES. I find the evidence supports that ES had more direct knowledge of the circumstances surrounding alleged water restriction violations, and I also find the written evidence of the landlord, an email from ES to the tenant to be confusing and contradictory. In that email, submitted by the landlord, ES writes to the tenant that just because she was allowed 1 hour of watering did not mean she had to take the full hour.

I find this email supports the statements of the tenant that she had permission from ES to water for an hour twice a week. I also find the evidence supports that once the tenant received the warning letter of the landlord, she did comply. Although no date was listed on the warning letter to the tenant, a handwritten notation shows that it was most likely sent by registered mail on July 9, 2015 and the Notice was sent on July 15, 2015. I find it important to note that the ES's email to the tenant confirming the tenant had permission to water for 1 hour, twice a week was dated July 16, 2015, the day after the Notice. Additionally, in that email, ES informed the tenant that she was further reducing her water restriction.

As to the other allegations of the landlord, that being the alleged intimidation of the other tenants by this tenant and a pet violation, I do not find that the circumstances show that this was the reason the Notice was issued. The apparent reason the Notice was issued was due to the alleged violation of the water restrictions by the tenant.

At any rate, the other tenants failed to appear at the hearing to provide testimony, and therefore, it was not possible for the tenant to ask questions of the other tenants or cross examine them.

Overall, I prefer the evidence of the tenant, as it was undisputed by ES in her absence, who had the primary dealings with the tenant in this matter, and as it was undisputed by the other tenants. The landlord's agent who attended the hearing did not ask for an adjournment of the hearing in order to allow ES to participate.

Due to the above, I find the landlord has submitted insufficient evidence to support their Notice. As a result, I find that the landlord's 1 Month Notice to End Tenancy for Cause, dated and issued July 15, 2015, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

I award the tenant recovery of her filing fee of \$50.00. The tenant is directed to deduct this amount from her next or a future month's rental payment in satisfaction of her monetary award, notifying the landlord when she is making such deduction.

Conclusion

The tenant's application seeking cancellation of the Notice is granted as I have cancelled the Notice. The tenant is awarded recovery of her filing fee of \$50.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 31, 2015

Residential Tenancy Branch

