



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Crystal River Court Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPC, FF

Tenant: MT, CNC, MNDC, OLC, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession. The tenants sought a monetary order; more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

The tenants confirmed they received a 1 Month Notice to End Tenancy for Cause on July 28, 2015 and they submitted their amended Application for Dispute Resolution seeking to cancel the Notice on July 31, 2015. The tenants were allowed 10 days after receipt of the Notice to submit their Application. As they have submitted their Application within 3 days of receipt I find there is no need for additional time to submit their Application and I amend their Application to exclude the matter of more time to file their Application to dispute a notice to end tenancy.

At the outset of the hearing the tenants withdrew the portion of their Application seeking compensation for costs of landscaping and for discrepancies in rent. The tenants confirmed they just wanted to deal with the Notice to End Tenancy and to be allowed to keep their landscaping as it currently is.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 40, 48, 60, and 65 of the *Manufactured Home Park Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 40, 60, and 65 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on February 26, 2015 for a 1 year and 1 day fixed term tenancy beginning on March 1, 2015 for a monthly rent of \$415.00 due on the 1st of each month.

The tenancy agreement and park rules contain the following clauses that are related specifically to the issues under dispute by these parties:

- Tenancy Agreement Clause 9 reads, in part, “Any alterations or additions or improvements to the exterior of the Tenant’s home or the Site require the prior written approval of the Landlord....”;
- Tenancy Agreement Clause 10(g) reads, in part, “that the Tenant will strictly comply with Park Rules....”;
- Tenancy Agreement Clause 10 reads, in part, “A breach of the terms of this Section of this Agreement may result in termination of the tenancy.”;
- Park Rules dated November 30, 2014 Clause A-4 reads, in part, “Tenant shall enter into a contract with a contractor acceptable to the landlord.....to landscape the yard area....”;
- Park Rules dated November 30, 2014 Clause B-1 reads, in part, “No fill is to be brought into the Park without prior written approval of Landlord.”;
- Park Rules dated November 30, 2014 Clause B-11 reads, in part, “Grounds around the mobile home....shall be kept neat, clean and in safe condition, and shall be grassed and mowed by the Tenant at least weekly during the growing season”; and

The tenancy agreement also included Addendum 1 initialed by the tenants that required the tenants to complete certain repairs to the manufactured home no later than July 31, 2015. The repairs required included painting the siding on the shed on the rear of the home; replace a window on the east wall of the home; replace trim board between the siding and skirting; paint trim board; repair roof and rain water gutters and extend down spouts; re-gravel or pave driveway and repair walkway.

The landlord submits that the tenants signed the tenancy agreement, addendum and Park Rules on February 26, 2015 and that he went through all of the documents fully with the tenants. The landlord submits that since the tenants have moved into the park they have made alterations and modifications to their site without the approval of the landlord and that do not comply with the requirements set out in the tenancy agreement and Park Rules. The landlord submits that the tenants have also failed to comply with the requirements outlined in Addendum 1 for repairs to the manufactured home itself.

The landlord submitted into evidence several photographs and a copy of a letter sent to the tenants dated June 16, 2015 and a “Notice to Unit” dated July 3, 2015. The letter dated June 16, 2015 reminds the tenants of their obligations under Rule B11 and Rule A4. The letter goes on to request the tenants provide a sketch of their landscaping

proposal and specifically advising the tenants that a portion of their rock landscaping on the west side of the home must be cut in half.

The "Notice to Unit" states that the "siding is to be repaired and trim board replaced, per Addendum to Tenancy Agreement." The Notice also states that the "Unauthorized gravel to be removed and lawn replaced, per meeting yesterday, July 2, 2015. The placement of fill is in contravention of Rule B.1 and the removal of your lawn contravenes Rule B. 11 of the Rules for [the manufactured home park], per my letter of June 16, 2015." And finally the Notice allows the tenants until July 31, 2015 to remove the gravel and the lawn replaced and that the trim and siding must be repaired by August 15, 2015.

The landlord submitted a copy of a 1 Month Notice to End Tenancy for Cause issued July 28, 2015 with an effective vacancy date of August 31, 2015 citing a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenants submit that the landlord was aware of the alterations to the site that they were making. Specifically, the tenants submit that the on-site manager's wife had even made comments on how nice the yard was looking as they were making the alterations. The tenants testified that they installed the large number of rocks as a result of a multitude of cats running free in the park. They also state that the yard is not completely rock but contains several garden beds with many plants and greenery.

The tenants acknowledged receiving the landlord's letter of June 16, 2015 and the "Notice to Unit" of July 3, 2015. They also acknowledge they did not respond to the landlord by providing him a sketch of their work.

Analysis

Section 40 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

I accept from the landlord's evidence and testimony that the 1 Month Notice to End Tenancy for Cause was issued on July 28, 2015. I also accept that in the Notice to Unit issued on July 3, 2015 the landlord had allowed the tenants to complete the removal of gravel and replace the lawn by July 31, 2015 and the repairs to the trim on the home by August 15, 2015.

As the landlord issued the 1 Month Notice prior to the deadlines that he had set himself that he did not allow the tenants the full time that he had offered to rectify any breaches of material terms. I therefore find the landlord's 1 Month Notice to end Tenancy for Cause was issued prematurely. I therefore order the Notice to be cancelled.

As I have found the Notice was issued prematurely, I make no rulings on whether or not the terms the landlord has relied upon are material terms of the tenancy agreement. I do, however, offer this definition to the parties to consider: A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

Regardless, I also note that the parties had entered into a tenancy agreement that had very specific and reasonable obligations on the part of both parties. I also note that Park Rules are considered part of a tenancy agreement and both parties are bound by their obligations under the Park Rules.

As such, I find that the tenancy agreement, Addendum and Park Rules do provide obligations on the part of the tenants should they wish to make alterations to the pad site. One such obligation is that the tenants are required to obtain approval from the landlord for any of the alterations made. It is clear from the evidence and testimony of both parties that the tenants failed to obtain the landlord's approval for the changes already made.

As a result, I make the following orders:

- **I order** the tenants must complete the repairs as outlined in Addendum 1 of the tenancy agreement no later than October 31, 2015;
- **I order** that the tenants must request from the landlord approval for the current site design no later than October 15, 2015;
- **I order** that the landlord **may** require the tenants to redo any of the portions of their landscaping that is already completed to ensure it complies with the requirements outlined in the tenancy agreement and Park Rules agreed to by the tenants at the start of the tenancy;
- **I order** that if the landlord requires the tenants to make modifications he must provide written approval for areas approved and clear instructions to the tenants for any required modifications; and
- **I order** that if the landlord does require the tenants to make any modifications the tenants must comply within 30 days of receiving the landlord's written instructions for the modifications or to any mutually agreed upon deadlines. Any mutually agreed upon deadlines must be in writing.

If the tenants fail to comply with the above orders the landlord would be at liberty to issue a new 1 Month Notice to End Tenancy for Cause under Section 47(1)(l) which states: A landlord may end a tenancy by giving notice to end the tenancy if the tenant has not complied with orders of the director within the dates specified in the orders for the tenant to comply.

Conclusion

Based on the above, I find this tenancy will remain in full force and effect at this time.

As neither party was completely successful in their Applications I dismiss both parties' claims to recover their respective filing fees.

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: September 17, 2015

Residential Tenancy Branch

