Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein they sought to cancel a notice to End Tenancy for Cause issued on July 31, 2015 (the "Notice") an Order that the Landlord comply with the *Manufactured Home Park Tenancy Act,* the *Regulations* or the tenancy agreement.

Both parties appeared at the hearing. The Landlord was represented by the manager of the park, L.H. as well as the owner, K.S. The Tenants appeared on their own behalf at both hearings, appearing on their own at the October 22, 2015 hearing and were assisted by two advocates D.F. and J.M. at the December 16, 2016 hearing.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Although issues with respect to the delivery of evidence arose at the October 22, 2015 hearing necessitating an adjournment, the parties agreed at the December 16, 2015 hearing that all evidence that each party provided had been exchanged. No further issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim in this hearing is whether the Notice is to be cancelled or upheld as it relates to the question of whether this tenancy is continuing. I find this claim is not sufficiently related to the Tenants' claim that the Landlord comply with the *Act.* The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

Accordingly, I exercise my discretion to dismiss the Tenants' claim for an Order that the Landlord comply with the *Act, Regulations,* or the tenancy agreement pursuant to section 62(3) and I grant the Tenants leave to re-apply for this other claim.

At the October 22, 2015 hearing the Landlord made an oral request for an Order of Possession. Section 55 provides that such an oral request may be made and must be granted in the event a Tenants' application to dispute a notice is dismissed.

Issues to be Decided

1. Should the Notice be cancelled?

2. Is the Landlord entitled to an Order of Possession?

Background and Evidence

L.H. was not able to state when the tenancy began. She testified that when she became manager of the manufactured home park she was not provided with any records of the tenancy. She noted in her testimony that the Tenants confirmed the tenancy began in 2009.

The Landlord issued the Notice on July 31, 2015. L.H. testified that the Tenants were served in person that day at 2:05 p.m. by the owner, K.S. which was witnessed by L.H.

The reasons for issuing the Notice were as follows:

- The tenants or a person permitted on the property by the Tenants has:

    - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and

    - Put the landlord's property at significant risk.

L.H. testified that the reason for issuing the Notice was because of the Tenant's unsightly yard. In support the Landlord provided photos which she testified were taken on September 29, 2015. The photos depicted the following:

- A manufactured home site where an RV is parked behind a fence.

- An outdoor area wherein a trampoline, culvert, truck canopy, and other items are located.

L.H. testified that unlicensed vehicles are not allowed within the manufactured home park which she testified is provided for in the park rules and regulations. L.H. submitted that the Tenants have not provided any proof that the vehicle was licensed.

L.H. further submitted that because the Tenants moved an RV into their fenced area, the children have no area in which to play which results in them playing outside the fenced area creating an unsafe and hazardous situation.

L.H. further confirmed that the area which is depicted containing trampoline is part of the Tenant's manufactured home site as they "won that in arbitration."

L.H. testified that the Tenants' trampoline is not netted and because it is out in the open it is usable by any child causing a safety risk. She also testified that there are items beside the trampoline which could seriously injure someone if they fell off.

L.H. testified that the City in which the manufactured home park is located have attended the manufactured home park, communicated requirements for the Landlord to clean up the park as well as specific direction with respect to various sites. Introduced in evidence by the Landlord were the following letters, notes and communication from the City to the Landlord:

- a letter dated September 16, 2014;
- a letter dated October 2, 2014;
- a letter from the city dated October 27, 2014;
- June 10, 2015 notes from the bylaw inspection which references specific "lots";
- July 2, 2015 letter from the City regarding specific lots;
- a letter dated July 9, 2015 regarding remedial action required for specific sites;
- a "Staff Report to Council Planning and Development" report which is dated July 20, 2015; and
- a letter dated August 28, 2015.

It is notable that although many manufactured home sites within the park are specifically referenced in the above communication, the subject rental unit is not mentioned in any of them.

L.H. testified that the owner, K.S., did a “major cleanup” and the City found that it was not good enough after which the City came in and removed three units themselves.

The Landlord also provided in evidence a “warning letter” sent by the Landlord to the Tenants on October 6, 2014 which L.H. testified was sent as a generic letter to all occupants of the manufactured home park.

There was no evidence submitted which showed that the Landlord requested proof of insurance on the Tenants’ RV, nor was there any evidence that the Landlord brought their concerns about the trampoline to the Tenants’ attention prior to submitting evidence in response to the Tenants’ Application.

L.H. also testified that the Tenants have attempted to resolve this in the “media”. She did not explain what she meant by this comment.

K.S. testified that he has done his best to clean up the manufactured home park and that apparently it is “not enough”. He further stated that he has tried to communicate with these Tenants but they are “rude, obnoxious and very difficult to deal with.” He also stated that the Tenants do not get along with others or the Landlord.

M.M. testified on behalf of the Tenants. She testified that the tenancy began August 16, 2009. Monthly pad rent is payable in the amount of $290.00.

M.M. testified that the photos submitted in evidence by the Landlord (which L.H. testified were taken September 29, 2015) were in fact the same photos submitted by the Landlord at an arbitration on July 8, 2015.

M.M. also testified that the RV was moved in August of 2015. She further confirmed that the RV was in fact insured and stated that at no time did the Landlord ask her for proof of insurance.

M.M. also testified that she was never informed that the trampoline needed to be moved. She said that the first time she was made aware that the trampoline was an issue for the Landlord was when the Landlord submitted their evidence for this arbitration.

M.M. stated that she did not receive the communication from the City, until she received the Landlord’s evidence package.

M.M. confirmed that they received the October 6, 2014 letter from the Landlord on October 9, 2014 noting that she was given until October 23, 2014 to clean the outside area. She testified that while no specific direction was given, they have substantially tidied the outside area. She testified that the RV (which was in fact insured) has been moved. She also testified that the trampoline was dismantled in October of 2015. She also stated that the truck canopy is gone and other items have been removed from their yard thereby improving its overall appearance.

The Tenant submitted in evidence a copy of a newspaper article from July 7 or 8, 2015. In this article the writer notes that, "actions are being levelled against both the individual home owners, where applicable, as well as the mobile home park".

The Tenant submitted that in all the letters from the City the subject manufactured home site was not mentioned. She also confirmed that to her knowledge no "actions were being levelled against the Tenants".

The Tenant testified that she had never been provided a tenancy agreement or the manufactured home park rules and regulations.

The Tenants also provided two letters of support from other neighbours in the manufactured home park.

The Tenants' advocate, D.F., made the following submission on the Tenants behalf.

- The Tenants have lived in the manufactured home park since 2009 without incident.
- The Tenants have not received any formal breach letters.
- Any "breach letters" that were provided to the Tenants were not really addressed to the Tenants, did not provide specific direction and were not signed by the author.

In reply the Landlord conceded that she may have taken the photos before July 2015.

L.H. conceded that they did not communicate their concerns with the Tenant with respect to the RV or the trampoline either orally or in writing as they are unable to communicate effectively with the Tenants.

L.H. then provided a copy of the Tenant's post on social media. When I asked her how that related to the Notice she responded "it shows that they are not happy here".

L.H. confirmed that the Tenants were all in receipt of the rules and regulations as of September 2013 as she stated that she received them at that time (she is also an occupant of the park). She stated that she is under the impression that if she has a copy, so do all the other tenants.

Analysis

The Landlord cited the Tenants unsightly yard as being the reason for issuing the Notice.

The letters provided by the Landlord from the City confirm that the Landlord has been directed to clean up the manufactured home park. Many of the manufactured home sites were noted as

problematic and provided specific direction in terms of required remedial action. The subject rental property was not mentioned in any of the letters provided in evidence by the Landlord.

The Landlord confirmed that they have not communicated their concerns about the RV or trampoline to the Tenants. L.H. stated it was because they find it difficult to communicate with the Tenants. I find that in failing to communicate these concerns to the Tenants, the Landlord has not given the Tenants notice of the alleged breaches, or provided them sufficient warning as to the potential impact on the tenancy.

While communication between the parties may be strained, the Landlord is in the business of renting manufactured home sites and is expected to communicate with tenants. I find this is particularly the case if the Landlord believes they have grounds to end a tenancy as a tenant deserves to know the allegations and be afforded an opportunity to correct any issues raised by the Landlord.

During the hearing I advised the Landlord that I would review the photos in the file which was heard during the July 2015 arbitration. This review confirmed the Tenants' submission that the photos submitted by the Landlord for this hearing were the same photos she submitted for the July 2015 hearing, not taken in October of 2015 as L.H. testified.

I accept the Tenants' evidence that they have not received any correspondence from the City with respect to their manufactured home site. I further accept the Tenants' evidence that the Landlord has not provided them specific direction with respect to the required cleanup of their outdoor area. Despite this, the Tenants have taken steps to clean up their yard to improve the overall condition of the manufactured home park.

The Owner, K.S., testified that the Tenants do not get along with the Landlord and the manager, and do not get along with others. Although not specifically stated, this appears to be K.S.'s reason for ending the tenancy. A tenancy is a business relationship, not a personal relationship, and while it is better for both parties to "get along", this is not a requirement for a successful tenancy.

Accordingly, I find that the Landlord has failed to show that the Tenants, or persons permitted on the property by the Tenants, have significantly interfered with or unreasonably disturbed another occupant or the Landlord, or put the Landlord's property at significant risk.

The Notice is cancelled. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act.*

The Tenants, having been substantially successful are entitled to recovery of the $50.00 filing fee; they may deduct $50.00 from their next month's pad rental to recovery this sum from the Landlord.

Conclusion

The Tenants application for an Order that the Landlord comply is dismissed with leave to reapply.

The Landlord failed to prove the Notice. The Notice is cancelled and the Tenants are entitled to recovery of the $50.00 filing fee.

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: December 18, 2015

Residential Tenancy Branch