



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on May 19, 2016 (the "Application").

The Tenant applied for the following relief pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"): an order cancelling a 1 Month Notice to End Tenancy for Cause dated May 17, 2016 (the "1 Month Notice"); and an order granting recovery of the \$100.00 filing fee.

The Tenant appeared at the hearing on her own behalf, and was assisted by E.N. The Landlord attended the hearing on her own behalf. A.B., the manufactured home park owner, also attended and gave evidence. All parties giving evidence provided their solemn affirmation.

The Tenant acknowledged receipt of the Landlord's documentary evidence. The Tenant did not submit any documentary evidence.

The parties were given the opportunity to provide their evidence orally and in documentary form, and to make submissions to me.

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.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the 1 Month Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Landlord submitted into evidence a copy of the agreement between the parties. It confirms a month-to-month tenancy began on January 28, 2011. Rent is due and payable on the first day of each month.

The 1 Month Notice provides only one basis for ending the tenancy: "Tenant has engaged in illegal activity that has, or is likely to: damage the landlord's property."

The Landlord provided documentary evidence and oral testimony regarding the 1 Month Notice. In a written statement submitted by the Landlord, she advises that in the summer of 2015, the manufactured home park constructed a retaining wall. In their oral testimony, the Landlord and A.B. also described landscaping in the area of the wall. Photographs of the wall and landscaping were submitted by the Landlord.

However, on May 17, 2016, the Landlord advised that she noticed plants on what she understood to be common area. The Tenant was asked to remove the plants, but refused to do so and swore at the Landlord.

The Landlord says the plantings have put holes in the protective ground cloth, which needs to be repaired.

According to the Landlord, the Tenant was advised that the common areas of the manufactured home park were the responsibility of the Landlord, and that planting was not permitted, at the beginning of the tenancy.

In response, the Tenant says the area where she planted is on her site, and is not on common property.

Further, on behalf of the Tenant, E.N. submitted that the Landlord should provide a diagram confirming the boundaries of the Tenant's site before the plants are removed. He also submitted there is no evidence of illegal activity on the part of the Tenant.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on the balance of probabilities, I find the following:

Section 40 of the *Act* permits a landlord to issue a notice to end tenancy if a tenant, or a person permitted in the manufactured home park by the tenant, has engaged in illegal

activity that has caused or is likely to cause damage to the landlord's property. The 1 Month Notice issued by the Landlord purports to end the tenancy on this basis.

The Tenant made an application for dispute resolution on May 19, 2016, within the timeframe permitted under section 40 of the *Act*.

Although the Landlord did provide some evidence of some damage to the Landlord's property, I find there is insufficient evidence for me to conclude the damage was a result of illegal activity on the part of the Tenant.

Accordingly, I find that the 1 Month Notice is cancelled and that the tenancy continues until otherwise ended in accordance with the *Act*.

Having been successful, I grant the Tenant an order for recovery of the \$100.00 filing fee. The Tenant may deduct this amount from a future month's rent.

The Landlord and the Tenant are strongly encouraged to consider their respective rights and obligations under Part 2, Division 3 of the *Act*, and the ways a tenancy may be ended by either party under Part 5, Division 1 of the *Act*.

Conclusion

For the reasons outlined above, the 1 Month Notice is cancelled and the tenancy continues until otherwise ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1 of the *Manufactured Home Park Tenancy Act*.

Dated: June 21, 2016

Residential Tenancy Branch