



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOODWILL INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, FF

Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that the male Tenant personally delivered the Application for Dispute Resolution and the Notice of Hearing to the Landlords business office, although she cannot recall the date of service. The female Agent for the Landlord stated that she does not recall precisely how/when these documents were received, however she acknowledges receipt of the documents.

On August 30, 2016 the Tenant submitted a package of evidence to the Residential Tenancy Branch. On September 01, 2016 the Tenant submitted a duplicate package of evidence to the Residential Tenancy Branch, with the exception that the second package contained colour photographs. The Advocate for the Tenant stated that the package of evidence with the colour photographs was served to the Landlord, via registered mail, on August 30, 2016. The female Agent for the Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On September 06, 2016 the Landlord submitted a package of evidence to the Residential Tenancy Branch. The female Agent for the Landlord stated that this evidence was personally served to the male Tenant on September 03, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began in 1990 or 1991;
- the rent is due by the 1st day of each month;
- in July of 2016 the female Tenant was personally served with a One Month Notice to End Tenancy for Cause, dated July 18, 2016, which declared that the Tenants must vacate the rental unit by September 01, 2016; and
- the reasons cited for ending the tenancy on the Notice to End Tenancy are that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The female Agent for the Landlord stated that the Landlord wishes to end this tenancy, in part, because the Tenants' son has periodically created disturbances on the residential property for approximately ten years. She stated that:

- the Landlord has several recorded instances of the son causing a disturbance, some of which were submitted in evidence;
- the various disturbances were reported to the Landlord by occupants of the residential property;
- some of the "incident reports" indicate that the Tenants' son has been inside the trailer, although most reports involve him being outside the trailer; and
- she does not recall whether the Tenant was spoken to after each reported incident.

The male Agent for the Tenant stated that he has spoken to the Tenant on several occasions to advise her that her son is creating disturbances on the residential property and to encourage her to obtain a "restraining order" preventing her son from coming to the property.

The Evening Watchman stated that:

- on July 08, 2016 he asked the Tenants' son to leave the residential property, as he was loitering near the park washrooms;
- the son spat at him
- the son grabbed his arm and twisted it behind the Evening Watchman's back;
- the son punched him in the arm;
- the assault was reported to police;
- he has told the police that he wants the son charged with assault;
- he does not know if the son has been charged with assault; and
- he has not applied for a restraining order against the son.

The Tenant stated that:

- her son has been on the residential property on numerous occasions, without the consent of the Tenants;
- she is aware that her son has been disturbing occupants of the residential property for about four years;
- she is aware that her son has been on the property on several occasions in the last several months;
- she has told her son on numerous occasions that he is not permitted on the residential property;

- on a few occasions her son has gained access to her home through an unlocked door, but the Tenants have not permitted him to enter their home since February of 2014;
- whenever her son comes to the property she tells him he has to leave, which she understands causes a disturbance;
- if her son refuses to leave on his own she phones the police or the ambulance who escort him off the property;
- she has phoned the police on several occasions asking that her son be removed from the property;
- the male Agent for the Landlord has suggested, on several occasions, that she should seek a “restraining order” to prevent her son from accessing the residential property; and
- she has attempted to obtain a “restraining order” but the police have told her one is not warranted, given the nature of her son’s behaviour towards her.

The Advocate for the Tenants stated that:

- the Tenants have been trying to prevent their son from coming to the residential property;
- the Tenants have been unable to obtain a restraining order;
- the Landlord may be in a better position to obtain a restraining order preventing the Tenants’ son from coming to the property, given that the physical altercation that occurred between the son and the Evening Watchman on July 08, 2016.

The female Agent for the Landlord stated that the Landlord wishes to end this tenancy, in part, because the Tenants have periodically created disturbances on the residential property by fighting between themselves. She stated that several occupants have been reported being disturbed by the Tenants fighting between themselves.

The Evening Watchman stated that:

- after the Tenants’ son was removed from the property by the police on July 08, 2016 the parents continued to fight until 3:00 a.m. the following morning;
- that he did not ask them to reduce the noise level because he feared it would make matters worse; and
- he did not report the noise to the police.

The Tenant stated that:

- any loud arguments at the rental site would be between the Tenants and their son, not between the Tenants themselves;
- she and the male Tenant were not arguing between themselves on July 08, 2016 or July 09, 2016;
- any noise that occurred after her son was taken away was from her crying; and
- she was never made aware that her crying was disturbing other occupants.

The Landlord submitted 15 “incident reports”, dated between April 26, 2016 and August 24, 2016, all of which relate, in part, to the son being on the residential property. Some of the reports indicate that there were loud arguments from inside the trailer when the son was reported to be on the property. I note that there no reports of disturbances at the rental site were submitted that relate to a disturbance when the son was not on the property.

The Landlord and the Tenants agree that only two written warnings were provided to the Tenants, both of which relate to arguments with the son and both of which were issued in 2013.

The female Agent for the Landlord stated that no further written warnings were issued because the Landlord understood the Tenants were intending to move to another community. The Tenant stated that they did consider moving to another community that is further away from their son but they were unable to do so for financial reasons.

The Landlord submitted a letter from a neighbour who reported being disturbed by arguments between the male Tenant and his son and from loud banging noises from the vicinity of the site. I note that this neighbour does not make any references to arguments between the Tenants.

The female Agent for the Landlord stated that the Tenants have never been issued a written warning in regards to arguments between the Tenants. The male Agent for the Landlord stated that he has verbally informed the Tenants that they have disturbed other occupants with their arguments.

The Tenant stated that they have never been informed, verbally or in writing, that other occupants have been disturbed by arguments between the Tenants.

Analysis

Section 40(1)(c) of the *Manufactured Home Park Tenancy Act (Act)* stipulates that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted in the manufactured home park by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park or seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. (Emphasis added)

As the Landlord is attempting to end the tenancy, the Landlord bears the burden of proving there are grounds to end the tenancy in accordance with section 40(1)(c) of the *Act*.

On the basis of the undisputed evidence I find that the Tenants' son has caused several disturbances at the residential complex when he has refused to leave the property when directed to do so by the Tenants or the Evening Watchman and that he was involved in a physical altercation with the Evening Watchman in July of 2016.

On the basis of the testimony of the female Tenant and in the absence of evidence to the contrary, I find that the Tenants' son has not been invited onto the property by the Tenants since February of 2014; that when he arrives at the property the Tenants' tell him he must leave; and if he refuses to leave the Tenants phone the police for assistance. I therefore find that he has not been permitted in the manufactured home park by the Tenants in more than 24 months.

As the Tenants' son has not been permitted in the manufactured home park by the Tenants in more than 24 months, I find that the Landlord does not have the right to end this tenancy as a result of disturbances the son has been causing in the last two years.

I find that the Tenants have made reasonable attempts to prevent their son from accessing the residential property, including making an effort to obtain a restraining order. Given the physical altercation that occurred between the Tenants' son and the Evening Watchman on July 08, 2016, I find that the Landlord may be in a better position to obtain a court order that prevents the son from being on the residential property. I specifically note that if it can be established that the Tenants fail to cooperate with the Landlord's attempt to obtain a court order or they do not

respect a court order that is obtained by immediately reporting their son's presence to the police, the Landlord may have the right to end this tenancy in the future.

I find that the Landlord has submitted insufficient evidence that the Tenants have caused an unreasonable disturbance by fighting between themselves. In reaching this conclusion I was influenced by:

- the absence of any written or oral evidence from an occupant of the rental unit that indicates that occupant has been disturbed by the Tenants arguing between themselves;
- with the exception of the incident report dated July 08, 2016, no incident reports were submitted that indicate an occupant has been disturbed by the Tenants arguing between themselves; and
- the female Tenant's testimony that any loud arguments at the rental site would be between the Tenants and their son, not between the Tenants themselves.

On the basis of the undisputed evidence I find that the female Tenant was crying on the evening of July 08, 2016, which may have disturbed other occupants.

Even if I accepted the Evening Watchman's testimony that he heard the Tenants fighting after their son was removed from the property on July 08, 2016 over the female Tenant's testimony that they were not fighting, I would not conclude that the nature of the disturbance, including the crying, was insufficient to end the tenancy. In reaching this conclusion I was influenced by the undisputed testimony that the Evening Watchman did not intervene, either by asking the Tenants to be quiet or by reporting the problem to the police. Given that the Tenants were not made aware that they were disturbing others, I find that the Tenants were not given a reasonable opportunity to modify their behaviour.

I find that the Landlord has submitted insufficient evidence to establish that the Tenants have been informed that they have disturbed other occupants by arguing between themselves. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the male Agent for the Landlord's testimony that he has discussed this issue with the Tenants or that refutes the female Tenant's testimony that the Tenants have not been informed they have disturbed other occupants with their arguments.

Even if the Tenants had disturbed other occupants by fight amongst themselves, I find there is insufficient evidence to show that the Tenants were informed that this behaviour has disturbed other occupants. I therefore find that the Tenants could not reasonably have been expected to modify their behaviour and act in a manner that does not disturb other occupants.

After considering all of the written and oral evidence submitted I find that the Landlord has failed to establish grounds to end this tenancy pursuant to section 40(1)(c) of the *Act*. I therefore grant the Tenants' application to set aside the One Month Notice to End Tenancy that is dated July 18, 2016.

I specifically note that if it the Tenants disturb other occupants of the residential property in the future, the Landlord may have the right to end this tenancy.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion

The One Month Notice to End Tenancy, dated July 18, 2016, is set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

I authorize the Tenants to reduce one monthly rent payment by \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

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

Dated: September 15, 2016

Residential Tenancy Branch