



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened to deal with the tenants' application under the *Manufactured Home Park Tenancy Act* (the "Act") to cancel a 1 Month Notice to End Tenancy For Cause dated March 2, 2017 (the "1 Month Notice") and for recovery of the application filing fee.

Both of the named tenants attended the hearing. The manager, who is also a tenant of the manufactured home park, appeared for the corporate landlord. Both parties had full opportunity to be heard, to present affirmed testimony, to present documentary evidence, to make submissions, and to respond to the submissions of the other party.

Service of the tenants' application and notice of hearing was not at issue.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 Month Notice?

Are the tenants entitled to return of the application filing fee?

Background and Evidence

It was agreed that this tenancy began in or around July of 2013, that rent is due on the first of the month, and that this is a month to month tenancy. The manager has been unable to locate any written tenancy agreement but believes that a written agreement was signed. The manager says the agreement is only with the male tenant and the agreement specifically restricted the female tenant from residing at the manufactured home park.

The male tenant agrees that a written tenancy agreement was entered, and says that it was with both of the tenants named in this dispute.

The 1 Month Notice indicates that the tenants have “significantly interfered with or unreasonably disturbed another occupant or the landlord” and “seriously jeopardized the health or safety or lawful right of another occupant or the landlord.”

The tenants received the 1 Month Notice on March 2, 2017 and filed their application to dispute it on March 10, 2017. In the details section of their application they state: “There was a dispute. The landlord is our neighbour. Tried to reconcile. Landlord refused. Previous problems. Landlord is difficult to talk to.”

The landlord did not submit any evidence and did not call any witnesses. He testified that the female tenant is not supposed to be living in the manufactured home park site but that she has moved in and out since the tenancy began. He says that she is an “illegal tenant” and that the manufactured home park rules say that anyone who is in the park for longer than three weeks without written permission is an “illegal occupant.”

The manager also stated that when the female tenant initially moved in, “the fireworks started.” She moved out and then was “allowed back.” He testified that she causes “constant issues” and that the police have been called twice for disruptions within her unit. He stated that she yells and screams at her child, and that he has had to ask her to close her windows because of the noise. He also stated that she yells and screams with the windows open on purpose and that she has been disrespectful, disturbed the peace, and been deliberately belligerent. He testified that things “quiet down” when the male tenant is away for work. He further testified that the female tenant has accused him of spying on her and otherwise insulted him, calling him lazy and criticizing the work he does in the park.

The manager also stated that another 1 Month Notice was issued to these tenants at one point. He did not say when that was or what the outcome was.

The manager and the tenants have neighbouring sites in the park. The manager testified that when the male tenant initially moved in the manager asked that he keep the curtains on one side of his home closed to allow the manager privacy and that the male tenant has been willing to do this but the female tenant has not.

The tenants testified that they have not been unreasonably disruptive. The male tenant acknowledged some fighting but pointed out that they live in a manufactured home park and that when the windows are open in the summer the residents are going to hear one

another. The male tenant said that the manager and his partner also fight and that the police have also been called to their home. He said that about two years ago when they had guests over to celebrate a family member's marriage they had their windows open and the landlord came over with sheet metal to cover them or create some sort of barrier.

The female tenant stated that she has not been unreasonably disruptive and says that she should not be required to keep her curtains closed. She said that the 1 Month Notice before me today was issued after the manager left a voice mail with the male tenant saying: "Your girlfriend keeps opening the curtains. She's got to go." She further said that the manager has unrealistic expectations in that he believes that he can enter their yard at any time and that they must keep the curtains closed.

Analysis

Section 40(1)(c)(i) of the Act allows a landlord to end a tenancy for cause where the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. Section 40(1)(c)(ii) allows for the same where a tenant has seriously jeopardized the health or safety or other lawful right of a landlord or another occupant.

Unless the tenant agrees that the tenancy will end, the tenant must dispute a notice under this section by filing an application within 10 days of receipt. The tenants are within this timeline.

Once a tenant disputes a notice, the burden of proof is on the landlord on a balance of probabilities to establish the cause alleged. Here, the landlord has not submitted any documentary evidence in support of its claim, and the manager's testimony was not sufficient to convince me that the tenants have breached either of s. 40(1)(c)(i) or (ii).

This tenancy began in 2013. The manager was not specific about the dates when the alleged yelling and screaming or police visits occurred. He has not submitted complaints from other neighbours in the park, which one would think the manager of the park would be receiving if other tenants were being disrupted. He has not submitted any warning letters to these tenants, which one would think he would be issuing in his role as manager if other tenants were being disrupted. He has made only general statements and I am unable to understand the timing and magnitude of any disruption or disturbance that one or both of the tenants may have caused.

In summary, the landlord has not established on a balance of probabilities that there is cause to end the tenancy. Accordingly, I cancel the landlord's 1 Month Notice.

Conclusion

The tenants' application to cancel the 1 Month Notice is allowed. The 1 Month Notice is cancelled. The tenancy will continue until ended in accordance with the Act.

As the tenants' application is successful, I grant them the cost of the filing fee in the amount of \$100.00 and authorize them to withhold \$100.00 from one month's rent in full satisfaction of this award.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under the Act. A decision or order is final and binding, except as otherwise provided in the Act.

Dated: April 13, 2017

Residential Tenancy Branch