



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, AS, O, FF

Introduction

The tenants apply to cancel a one month Notice to End Tenancy for cause dated and received May 31, 2017. The also seek an order permitting them to sell their manufactured home(s) and a monetary award for damage to a vehicle and related costs.

The parties were informed of the requirements of s.28 *Manufactured Home Park Tenancy Act* (the “Act”) for a tenant to assign or sublet a manufactured home site. The tenants have not yet presented the landlord with the required request for consent. The tenants’ request for an order in that regard is therefore dismissed. If they present the landlord with the required consent form and the landlord refuses, the tenants may apply in that event.

Rule 2.3 of the Rules of Procedure provides that claims made in an application must be related. This matter has been given a priority hearing date because the continuation of the tenancy has been threatened by the issuance of the Notice. I exercise my discretion and dismiss the tenants’ claim for damages related the their vehicle, with leave to re-apply.

Issue(s) to be Decided

Does the evidence presented during the hearing disclose valid and sufficient grounds for ending the tenancy?

Background and Evidence

The manufactured home site is one of two on the landlord's semi-rural property. It would appear that site was originally intended as a recreational vehicle site, with hookups for short term RV use.

The tenancy started in July 2014. The tenancy is month to month at a rent of \$362.00. The tenants have two RV's on the property, connected by an enclosed structure.

The landlord lives in a home on the same property.

The home and two sites are serviced by a well. Occasionally, in dry times it runs low and has, in the past, run dry.

The Notice to End Tenancy claims that the tenants have breached a material term of their tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testifies that the main problems are the tenants' water usage and their disposal of garbage. He is also concerned that the tenants' site is untidy and Mr. B. is unpleasant.

Occasionally the landlord has to impose water restriction on the tenants and on the tenant of the other site (and, assumedly, on himself) in order to ensure sufficient water for necessary living requirements.

At these times he has asked the tenants to limit water usage but, on one occasion, in May 2017 he found the tenant Mr. B. using a pressure washer to clean the outside of an RV. He refers to an earlier letter dated November 1, 2015 regarding water usage.

Also in May, the landlord located a large pile of half-buried garbage bags filled with what was mostly used cat litter. He ascribes this burial to the tenants because amidst the garbage he found an empty prescription pill bottle bearing the tenants' last name.

The landlord also complains about the untidiness of the site, presenting photographs that show a number of small buildings and piles of materials covered in tarps.

The tenants say that while their water is restricted, the tenant of the other site is permitted to fill a 400 gallon hot tub and keep it topped up.

They seem to deny the half-buried garbage is theirs but also say that the landlord previously permitted them to spread cat litter in that location.

Analysis

The evidence satisfies me that the tenants were using a pressure washer during a time the landlord had requested that water usage be restricted. I am satisfied that the neighbour's hot tub was filled at a time when water from the well was available. Occasionally topping up a hot tub, if that in fact occurred, is a minor thing in my view.

The evidence satisfies me that the tenants have been in the habit of discarding cat litter and occasionally other refuse in plastic bags under the brush on adjacent property. This cannot be considered by any reasonable person to be "spreading" the litter to permit decomposition.

The evidence does not show that the tenants are keeping the site in an "untidy" state. They have a number of items stored, undercover, on the site and some items that might be considered "junk" by some, but the site is not untidy. The issue of unsightly premises is a very subjective one as well. The measure of it is often taken by local government under "unsightly premises" bylaws. In the circumstances of this case it has not been shown the premises are unsightly to anyone.

Despite the foregoing findings, neither of the two established claims; water usage or garbage disposal are "material terms" of the tenancy agreement.

A material term is defined as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement (Residential Tenancy Policy Guideline 8, "Unconscionable and Material Terms.")

It cannot be said that the parties would have agreed that even a trivial wastage of water during a water restriction or even a trivial discarding of a bit of garbage would give the landlord a right to end the tenancy.

For this reason, the Notice cannot be upheld.

Had it been requested, an order directing the tenants to properly dispose of garbage or an order that they comply with all water restriction imposed in writing on all the properties occupants, may have been appropriate. Similarly, the landlord has not

requested any monetary award for the considerable effort expended in unearthing and hauling away the tenants' bags of garbage.

Conclusion

The tenants' application to cancel the one month Notice to End Tenancy dated May 31, 2017 is allowed. The Notice is hereby cancelled. In the circumstances of this case I authorize the tenants to recover \$50.00 of the filing fee and I authorize them to reduce their next rent due by \$50.00 in full satisfaction of this award.

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: July 28, 2017

Residential Tenancy Branch