



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT OLC

Introduction

This hearing was convened in response to applications by the tenants pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”) for Orders as follows:

- to cancel a 1 Month Notice to End Tenancy for Cause (“1 Month Notice”) pursuant to section 40 of the *Act*;
- for an Order pursuant to section 55 compelling the landlords to comply with the *Act*; and
- a return of the filing fee pursuant to section 65 of the *Act*.

Tenant D.M. and landlord W.M. attended the hearing. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Issue(s) to be Decided

Can the tenants cancel the landlords’ Notice to End Tenancy?

Should the landlords be directed to comply with the *Act*?

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

Background and Evidence

Testimony was presented to the hearing by both parties that the tenants began occupying the property in July 2015. The tenants originally began by living in a home on the property as house sitters while the landlords were on vacation for the winter. In June 2016 the tenants moved to a trailer which they had brought onto the property and began occupying this unit.

No tenancy agreement was entered into by the parties, no pad rental was paid and the parties provided conflicting testimony as to whether any rent was paid at all. D.M. alleged that he paid \$1.00 per month in cash, while W.M. said that no payments were ever made.

The tenant stated that he was seeking an order cancelling the landlord's notice to end tenancy issued for cause. The notice to end tenancy was issued by the landlord for the following reasons:

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park

Tenant has not done required repairs of damage to the unit/site

At the hearing, the landlord said that the tenant had done significant damage to the property, and that the tenant had taken no steps to address this damage. Specifically, the landlord said that the tenant had cut the lock to a gate on three occasions, damaged some out buildings on the property and left numerous items on the property which had caused further damage to the land.

The tenant denied all aspects of the landlords' notice and stated that he had cut the locks to gain access to the property in emergency situations. Furthermore, the tenant alleged that the out buildings which are purportedly damaged, belonged to him and were acquired through a series of 'horse trades.' The landlord disputed this, arguing that he had purchased all of the materials for the construction of the sheds.

Analysis

This application raises an issue as to the nature of this tenancy and whether I have authority to decide this dispute under *The Manufactured Home Park Tenancy Act*. Section 2(1) of the *Manufactured Home Park Tenancy Act* states, "This Act applies to tenancy agreements, manufactured home sites and manufactured home parks."

Section 1 of the *Act* defines a tenancy agreement as, "an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities."

Based on the oral testimony presented at the hearing, I find that insufficient evidence exists demonstrating that a tenancy agreement was in place between the parties. Both parties agree that D.M. began occupying a trailer that was moved onto the property in June 2016. Both parties agree that no pad rental was paid and that no tenancy

agreement was signed between the parties. The parties provided conflicting testimony as to whether rent was paid at all. D.M. stated that he paid \$1.00 cash per month, while W.M. denied that any payments were made. Neither party provided any receipts for this payment.

In the absence of evidence indicating that a tenancy agreement was in place between the parties, I find that I am unable to consider the tenants application to cancel a notice to end a tenancy for cause on the basis of the 1 Month Notice because I find that there is no tenancy agreement between the parties.

The applicant is an occupant, and not a tenant under the definition of section 1 in the *Act*. *Residential Tenancy Branch Policy Guideline #13* establishes that an occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the occupant as a tenant. As I am not satisfied that W.M. agreed to accept the Respondent as a tenant when D.M.'s trailer was moved on to the property, section 2(1) of the *Act* does not apply to their relationship. No Notice to End Tenancy is necessary as neither the Respondent nor the Applicant are governed by the *Act*.

Conclusion

I find that I do not have jurisdiction in this matter and I dismiss the landlord's 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 *Manufactured Home Park Tenancy Act*.

Dated: November 21, 2017

Residential Tenancy Branch