



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 as a result of the tenant's Application for Dispute Resolution ("application") under the *Manufactured Home Park Tenancy Act* ("Act"). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated October 28, 2017 ("1 Month Notice").

The tenant and the landlord attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present any evidence that was submitted in accordance with the Rules of Procedure.

Neither party raised any concerns regarding having been able to review the evidence served upon them. I find the parties were sufficiently served under the *Act*.

Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator and confirmed that the decision would be emailed to both parties.

Issues to be Decided

- Should the 1 Month Notice be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties confirmed that no written tenancy agreement exists between the parties. As a result, I will deal with the unwritten nature of the tenancy agreement later in this decision. The landlord did not dispute that a month to month tenancy began on or about September 1, 2011. The parties agreed that monthly site rent is currently \$320.00 per month and is due on the first day of each month.

The parties agreed that the 1 Month Notice was served personally on October 28, 2017 and was dated October 28, 2017. The tenant disputed the 1 Month Notice on November 2, 2017. The effective date listed on the 1 Month Notice was November 30, 2017. The landlord alleged four causes on the 1 month notice as follows

1. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, safety or physical well-being of another occupant.
2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.
3. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
4. Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The landlords wrote as the details of cause the following:

“Disturbing other tenants/noise violations/Breach of a contract with landlord.”

[Reproduced as written]

Regarding cause 4, the landlord confirmed that the landlord did not have an order under the *Act* and as a result, cause 4 listed above was dismissed due to insufficient evidence as the landlord does not have an order under the *Act*.

Regarding causes 1 and 2, the landlord confirmed that while the police have been called, there have been no criminal charges laid against the tenant or police reports submitted to support illegal activity.

Regarding cause 3, the landlord was advised that this cause must fail as the landlord does not have a written tenancy agreement as required by the *Act* and as a result, the landlord is unable to prove a material term without a written tenancy agreement as a verbal tenancy agreement is not sufficient evidence of a material term of a tenancy. Therefore, cause 3 is dismissed due to insufficient evidence.

The tenant did not agree with any of the four causes alleged by the landlord in the 1 Month Notice.

Analysis

Based on the above, the testimony and documentary evidence, and on a balance of probabilities, I find as follows.

The 1 Month Notice has an effective vacancy date of November 30, 2017 which has passed. The tenant disputed the 1 Month Notice on November 2, 2017 which is within the ten day timeline provided for under section 40 of the *Act* to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. Regarding causes 1 and 2, the landlord confirmed that while the police have been called, there have been no criminal charges laid against the tenant or police reports submitted to support illegal activity. Given the above, I find the landlord has failed to meet the burden of proof to prove that the tenant has engaged in illegal activity and causes 1 and 2 are dismissed due to insufficient evidence.

At the very least, I would have expected the landlord to have a police officer as a witness, police statements or a copy of a police report. Based on the above, I find the landlord has provided insufficient evidence to prove causes two and three.

Regarding cause 3, as indicated above, the landlord was advised that this cause must fail as the landlord does not have a written tenancy agreement as required by the *Act* and as a result, the landlord is unable to prove a material term without a written tenancy agreement as a verbal tenancy agreement is not sufficient evidence of a material term of a tenancy. Therefore, cause 3 is dismissed due to insufficient evidence.

Regarding cause 4, the landlord confirmed that the landlord did not have an order under the *Act*. Therefore, as indicated above, cause 4 is dismissed due to insufficient evidence as the landlord does not have an order under the *Act*.

As the landlord has failed to prove any of the four causes listed on the 1 Month Notice and the landlord has the onus of proof, I **cancel** the 1 Month Notice dated October 28, 2017 as I find the 1 Month Notice is **not valid**.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

As the tenant's application is successful, and pursuant to section 65 of the *Act* I grant the tenant **\$100.00** for the recovery of the cost of the filing fee under the *Act*. **I authorize** the tenant a one-time rent reduction of **\$100.00** from February 2018 rent in full satisfaction of the \$100.00 recovery of the cost of the filing fee. As a result, I find that February 2018 rent will be \$220.00 instead of \$320.00.

I caution the landlord to ensure that all tenancy agreements are in writing as required by section 13 of the *Act*.

Conclusion

The 1 Month Notice issued by the landlord is cancelled.

The tenancy shall continue until ended in accordance with the *Act*.

The tenant has been granted \$100.00 for the recovery of the cost of the filing fee under the *Act*. The tenant has been authorized as a result to a one- time rent reduction of \$100.00 from February 2018 rent in full satisfaction of the \$100.00 recovery of the cost of the filing fee. As a result, I find that February 2018 rent will be \$220.00 instead of \$320.00.

The landlord has been cautioned to comply with section 13 of the *Act* by ensuring that all tenancy agreements are in writing.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: January 18, 2018

Residential Tenancy Branch