



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on August 20, 2018 (the "Application"). The Tenants applied to dispute a One Month Notice to End Tenancy for Cause dated August 07, 2018. The Tenants confirmed this was the only issue raised in the Application.

The Tenants appeared at the hearing. The Landlord and Co-landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose in this regard.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

The Co-landlord testified that there is a written tenancy agreement in this matter between the Landlord, Co-landlord and Tenants in relation to the site. The Tenants could not recall if there was a written tenancy agreement. The Co-landlord testified that the tenancy under the written agreement started October 1, 2012. The Tenants could not recall when it started. The parties agreed the tenancy is a month-to-month tenancy. The parties agreed rent is due by the first of each month. The Co-landlord testified that the written tenancy agreement is signed by the Tenants and Landlord. The Tenants could not recall this.

The Notice was submitted as evidence. It is addressed to the Tenants and refers to the site. It is signed and dated August 07, 2018 by the Landlord. It has an effective date of September 19, 2018. The grounds for the Notice are as follows:

1. The Tenant or a person permitted on the property by the Tenant has:
 - a. seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and
 - b. put the Landlord's property at significant risk.
2. The Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the site or park.
3. The Tenant has not done required repairs of damage to the site.
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Co-landlord testified that she mailed both pages of the Notice to Tenant T.B. on August 4, 2018. Tenant T.B. testified that she received two notices to end tenancy, one in the mail and one personally. She could not recall when she received the Notice. She could not recall if she received both pages.

Tenant T.B. could not recall when she filed the Application. It appears from our records that the Tenants filed the Application August 20, 2018.

In relation to the grounds for the Notice, the Landlord testified about a leak under the Tenants' home. He said it was noted in March that the water bill was high and so he thought there must be a leak somewhere. He testified that a couple of engineers rented

a piece of equipment that can determine where the leak is to assist. He said they found that the leak was from the Tenants' home. He testified that his workers went under the home and shut the water off. He said that the water buildup posed a risk to the surrounding water system because it collected, could become contaminated and then could go back into the water system which would contaminate it. He said that the water washed the ground away under the home such that the foundation is no longer stable and the whole home needs to be removed and the site remediated.

The Landlord testified that he told Tenant T.B. numerous times that there was water spraying out from under the home and that she needed to address this. He said Tenant T.B. is combative and does not address the issue. He said it is part of the park rules that tenants must maintain the home including the plumbing.

The Landlord testified that the leak had been going on for a year. He said he knows this due to the water usage in the park. He said he does not believe the problem has been properly addressed.

Tenant T.B. testified that she did not cause the water leak. Tenant T.B. acknowledged that the leak was under her home. She said a plumber came and told her that the area of the leak was the Landlord's responsibility and that the issue was the line coming into the lot and not from the lot to the home. She testified that her brother came and looked under the home in August and said it was dry. Tenant T.B. denied that the Landlord had talked to her about addressing the leak previously. Tenant T.B. disputed that the leak had been there for a year. She said she had the leak fixed and paid for this. She testified that she only paid for the repair because she had gone without water for four days and wanted the water back.

In reply, the Landlord testified that the leak was under Tenant T.B.'s home and he does not have access under the home. He said the area was Tenant T.B.'s responsibility to maintain.

The Landlord submitted an unsigned typed document indicating it is the manager's notes from the incident with the leak. This states that the leak was in Tenant T.B.'s line coming into the home. This refers to photos of the plumbing and leak.

The Landlord submitted a letter sent to tenants June 10, 2017 about maintaining the plumbing inside and outside their homes including under their homes.

Analysis

The Landlord was entitled to issue the Notice based on the grounds listed pursuant to sections 40(1)(c), (e), (f) and (g) of the *Manufactured Home Park Tenancy Act* (the "Act").

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept the testimony of the Co-landlord that she mailed the Notice to Tenant T.B. on August 4, 2018. I find the Notice was served on the Tenants in accordance with section 81(c) of the *Act*. In the absence of evidence about when the Tenants received the Notice, the *Act* deems it received five days after mailing pursuant to section 83(a) of the *Act*. I find the Tenants received the Notice August 9, 2018.

The Tenants had 10 days to dispute the Notice pursuant to section 40(4) of the *Act*. Based on our records, I find the Tenants disputed the Notice within the time limit set out in the *Act*.

The basis for the Notice is the water leak described. The Landlord testified that the leak was in a part of the line that was the responsibility of the Tenants to maintain. Tenant T.B. testified that the leak was in a part of the line that was the responsibility of the Landlord to maintain.

I did not understand the Landlord to take the position that the leak was caused by the actions or neglect of the Tenants. I note that this is not a situation where a leak went unreported and caused damage as the Landlord acknowledged knowing about an issue with water under the Tenants' home.

I am not satisfied based on the evidence provided by the Landlord that the leak was in an area of the line that falls to the Tenants to maintain. The evidence I have before me shows the leak was under the Tenants' home. No details were provided about where the water line onto the site stops and the water line to the home begins. The Landlord did not provide photos of the plumbing or the leak which, according to the notes of the manager, were available to the Landlord. The Landlord did not adequately explain where the leak was other than to say it was under the home. The Landlord did not provide a report or statement by the engineers that discovered the leak. I do not find the unsigned note of the manager sufficient to satisfy me that the leak was in an area of the line that was the responsibility of the Tenants.

I do not find it sufficient to say that the leak was under the home and therefore the responsibility of the Tenants. The Tenants would not be responsible for maintaining the water line onto the site whether this line was under the home or not. If the park rules or tenancy agreement state otherwise, I would find this contradictory to section 26 of the *Act* and unenforceable.

Given I am not satisfied the leak was in an area that falls to the Tenants to maintain, I find the Landlord has failed to prove the grounds for the Notice. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

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: October 10, 2018

Residential Tenancy Branch