



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Manufactured Home Park Tenancy Act*, (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) dated September 11, 2018, and to recover the filing fee for their application. The matter was set for conference call.

Both the Landlord and both Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Should the Notice dated September 11, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Are the Tenants entitled to the recovery of their filing fee for this hearing?

Background and Evidence

The parties testified that the tenancy began on April 28, 1987, and that rent in the amount of \$432.00 is to be paid by the first day of each month. There has been no security deposit paid for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that the previous Property Manager had personally served the Notice to end tenancy to the Tenant on September 11, 2018. Both the Landlord and the Tenant submitted a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - *Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord*
 - *Put the Landlord's property at significant risk*
- *Tenant or 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 or physical well-being of another occupant or the Landlord*
 - *Jeopardize a lawful right or interest of another occupant or the Landlord*

The Notice states that the Tenants must move out of the rental unit by October 31, 2018. The Notice informed the Tenants of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant had allowed two people to park their truck with a camper attached in their driveway and live out of it for several weeks. The Landlord also testified that the previous Property Manager had witnessed the Tenants allowing two teenaged girls to live with them on the property. The Landlord testified that it was a park rule that if anyone was to stay for longer than a few days, the Tenant's were to report the extra occupants to the onsite property manager.

The Tenants testified that their family had come to stay with them for several days but that they were not living there or planning to move in.

The Landlord also testified that on September 11, 2018, the local garbage pickup had been refused by the city for the Tenants' rental unit as there had been a box of used needles found their garbage.

The Tenants stated that they do not use needles but that they place their garbage at the road like everyone else in the park and anyone could have left the box of needles there.

Analysis

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

I find that the Tenants received the Notice on September 11, 2018. Pursuant to section 40 of the *Act*, the Tenants had ten days to dispute the Notice. I find the Tenants had until September 22, 2018, to file their application to dispute the Notice. The Tenants filed their application on September 20, 2018, within the statutory time limit.

During the hearing, I heard contradictory testimony from both parties regarding the Tenants allowing additional occupants to live on the rental property and the improper disposal of used needles, and the significant risk and disturbance to the Landlord this caused.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the Landlord has the burden of proving that this tenancy should end in accordance with his Notice.

After carefully reviewing the Landlord's documentary evidence, I find that the Landlord has not provided sufficient documentary evidence, to satisfy me, that the Tenant created a significant risk to the Landlord's property or interfered with or disturbed anyone on the rental property. Overall, I find there is an absence of physical evidence that would outweigh the contradictory verbal testimony of the parties.

I find that the Landlord has not proven cause sufficient to terminate the tenancy for any of the reasons given on the Notice issued. Therefore, I grant the Tenants' application to cancel the Notice dated September 11, 2018, and I find the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the *Act*.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful in their application to dispute the Notice, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for their application. The Tenants are allowed to take a one-time deduction of \$100.00, from their next month's rent.

Conclusion

The Tenants' application to cancel the Notice is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenants permission to take a one-time deduction of \$100.00, from their next month's rent.

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 6, 2018

Residential Tenancy Branch