



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CEDAR SPRINGS MOBILE HOME PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RP, OLC, LRE, FFT

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Manufactured Home Park Tenancy Act (the "Act"). The tenant applied for an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice"), for an order requiring the landlord to comply with the Act, an order suspending or setting conditions on the landlord's right to enter the manufactured home site and for recovery of the filing fee paid for this application.

The tenant and the landlord's agent (hereafter "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant confirmed that he had not submitted all his evidence to the landlord, which were some letters of support. I have therefore excluded those letters for consideration. Additionally, the tenant submitted that he received the landlord's evidence one week prior to the hearing and objected to it being considered.

I asked the tenant if he had a chance to review and consider the evidence and he said that he had; however, he contended he was not able to provide a response as he would not be allowed to because of the timeframe before the hearing.

I find it to be reasonable to allow the landlord's evidence as the tenant had time to review and consider the evidence. The tenant was allowed to provide oral responses to the landlord's evidence.

I have determined that the portion of the tenant's application dealing with a request for orders for the landlord's compliance with the Act and suspending or setting conditions on the landlord's right to enter the site are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's Application and dismissed that portion of the tenant's request for those orders, **with leave to reapply**.

Issue(s) 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

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant the Notice.

The Notice was dated May 3, 2019, was served by leaving the document with the tenant on that date and listed an effective end of tenancy of June 3, 2019. The tenant filed his application in dispute of the Notice on May 9, 2019. I note that this application was filed within the required 10 days allowed by the Act.

The causes listed on the Notice alleged that the 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, that the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the site or park, and that the tenant has not done required repairs of damage to the site.

The hand-written Details of Cause(s) by the landlord on the Notice said that the tenant was given a clean-up order to have the trailer and yard cleaned, but that the tenant has not complied.

The landlord's relevant documentary evidence included a written statement from the management team at the manufactured home park, summarizing the issues with the tenant, an unsigned statement which the landlord claims to be from other tenants in the manufactured home park stating that the tenant's site is in a mess, a written warning to the tenant to clean his site, and a copy of the park rules.

In response to my inquiry, the landlord confirmed that she had no evidence to show that the tenant has engaged in illegal activity.

As the second cause listed, the landlord submitted that the tenant's yard is in a constant mess since he moved in a year ago, despite issuing him a clean-up order. The landlord submitted that the tenant's home site is an eyesore and she is receiving complaints about the state of the site from other tenants. The landlord submitted that the tenant's home site is the first one coming into the park and presents a bad image.

The landlord submitted that the tenant has an excess number of vehicles, not allowed under the park rules and has used obscene language with the landlord and staff.

In response to my inquiry, the landlord submitted that the extraordinary damage to which the Notice referred to were deep, muddy ruts caused by the tenant's vehicles. The landlord said the ruts were a "mess to look at".

As to the third cause on the Notice, the landlord submitted that despite being written up for the state of his site, the tenant has only cut the grass. The landlord submitted further that the tenant has failed to put in gravel where he parks his vehicles.

The landlord referred to their photographs to show that the tenant's personal property is being stored around his manufactured home and is trying to hide it by using a tarp, which he refuses to remove.

Tenant's response-

The tenant submitted that there is no extraordinary damage and that he has made arrangements with the manager last year to level off the land in order to put in gravel. The tenant submitted further that he has not done so, as he has not received written permission to put in the gravel and fears that he will have to pay a large amount, only to be told to remove the gravel.

The tenant submitted that he wants to put away his personal property, but has no storage on-site, as the shed had to be removed when he moved into the site. The tenant said the tarp was put up with the landlord's permission and that there is inadequate drainage on and around his site.

The tenant's relevant evidence included references letters and a letter supporting his claim that the Notice was invalid.

Analysis

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

The landlord bears the burden of proving on a balance of probabilities they have grounds to end this tenancy and must provide sufficient evidence to support the cause(s) listed.

I have not considered the portion of the Notice that claimed the tenant has engaged in illegal activity, as the landlord confirmed that there is no illegal activity.

Under section 40(1)(e) and (f) of the Act, a landlord may issue to the tenant a notice seeking to end the tenancy if the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the site or park and that the tenant has not done required repairs of damage to the site, as is the case here.

Upon review of the relevant oral and documentary evidence, I find the landlord has submitted insufficient evidence to support their Notice to end this tenancy for the reasons listed.

The evidence from the landlord in the hearing and on the Notice was clear that the reason they sought to end the tenancy was due to the tenant's failure to clean his manufactured home site, not from damage to the manufactured home site, extraordinary or otherwise.

I therefore find the evidence shows the landlord has issued this Notice for reasons other than the ones marked on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause dated May 3, 2019, is not supported by the evidence, and therefore has no force and effect. I order

that the Notice be cancelled, and the tenancy will continue until ended in accordance with the Act.

I allow the tenant recovery of his filing fee of \$100.00, and direct that he deduct this amount from his next or a future month's rent payment in satisfaction of her monetary award. The tenant should inform the landlord when he is making this deduction.

The tenant is cautioned that he is well aware of the issues causing concern to the landlord and his failure to address those issues immediately may very well result in the landlord issuing the tenant a new Notice for reasons other than the ones in the present Notice. The tenant is encouraged to review the park rules in this regard.

Conclusion

I grant the tenant's application seeking cancellation of the landlord's Notice and the Notice is cancelled with the effect that the tenancy will continue until ended in accordance with the Act.

The tenant is directed to deduct \$100.00 from a future month's rent payment in satisfaction of his monetary award for recovery of the filing fee.

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: June 21, 2019

Residential Tenancy Branch