



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 17, 2019 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated July 11, 2019 (the “Notice”). The Tenant sought reimbursement for the filing fee.

The Tenant appeared at the hearing with the co-tenant. The 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 submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I have only referred 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, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord testified that there is a written tenancy agreement in this matter. Neither party had submitted a written tenancy agreement. The Tenant did not agree that there is a written tenancy agreement in this matter.

The parties agreed on the following. There is a tenancy agreement between the Landlord, Tenant and co-tenant in relation to the site. The tenancy started April 15, 2011 and is a month-to-month tenancy. Rent is \$33.00 due on the first day of each month.

The Notice was submitted as evidence and includes the following grounds:

1. Tenant or a person permitted on the property by the tenant has...
 - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - b. Put the landlord's property at significant risk.
2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - a. Damage the landlord's property.
 - b. Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
3. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord testified that he served the Notice on the Tenant by registered mail on July 11, 2019. The Tenant and co-tenant did not know when they received the Notice but agreed it was received by registered mail.

The Landlord testified as follows in relation to the grounds for the Notice. The issue is a truck that is owned by the Tenant and operated by another tenant in the park. The truck is too heavy to be in the park and has damaged the driveway. The photos submitted show the damage. The other tenant starts the truck early in the morning, lets it idle and

revs the engine which disturbs other tenants. The other tenant wakes others in the park up. The RCMP have attended over this. The park is zoned for residential use. The truck needs to be parked in a storage facility. The Tenant is responsible for these issues because he owns the truck.

The Landlord acknowledged that it is not the Tenant that is causing the noise or damage issues with the truck.

The Landlord submitted that there is illegal activity because the RCMP have attended. He said the Tenant is breaching the tenancy agreement.

The Landlord submitted a complaint letter that relates to the other tenant.

The Tenant submitted as follows. He has not done any of the things noted in the Notice. The Landlord is trying to evict him over the actions of another tenant. The Landlord and other tenant have had ongoing problems for a long time. The Landlord is attempting to bring him into their dispute. The issues raised are alleged issues that have not been proven. He cannot answer to the issues because it is not him causing them. He does own the truck. The truck is full of the other tenant's belongings. The other tenant is his employee.

Analysis

The Notice was issued under section 40 of the *Manufactured Home Park Tenancy Act* (the "*Act*"). A tenant may dispute a notice to end tenancy issued under section 40 of the *Act* within 10 days of receiving it pursuant to section 40(4) of the *Act*.

Given the testimony of the parties, I accept that the Landlord sent the Notice by registered mail July 11, 2019. The Notice was served in accordance with section 81(c) of the *Act*. The Tenant and co-tenant did not know what date they received the Notice. Under section 83(a) of the *Act*, the Tenants are deemed to have received the Notice July 16, 2019. The Tenant filed the Application July 17, 2019, within the 10-day time limit under section 40(4) of the *Act*.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules of Procedure.

I do not accept that the Tenant is responsible for the actions of the other tenant simply because the Tenant owns the truck at issue. It is the other tenant who operates the

truck. It is the other tenant who chooses where to park the truck and when to turn the truck on. I do not accept that the Tenant has control over when the other tenant turns the truck on or whether the other tenant disturbs others with the truck. It is not the Tenant who has caused the alleged damage to the driveway. It is not the Tenant who has created the alleged noise and disturbed others in the park. Given this, the Landlord does not have grounds to end this tenancy over the issues raised.

The Landlord has not proven the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful, I award the Tenant reimbursement for the \$100.00 filing fee under section 65(1) of the *Act*. The Tenant can deduct \$100.00 from one future rent payment under section 65(2) of the *Act*.

Conclusion

The Landlord has failed to prove the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful, I award the Tenant reimbursement for the \$100.00 filing fee. The Tenant can deduct \$100.00 from one future rent payment.

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: September 20, 2019

Residential Tenancy Branch