



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, LRE, OLC

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated August 26, 2019
- b. An order suspending or setting conditions on the landlord's right to enter the rental property.
- c. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary Matter:

The landlord in error set the date of the Notice to End Tenancy as September 26, 2019. I ordered that the Notice to End Tenancy be amended to provide the date of the Notice to End Tenancy as August 26, 2019.

I find that the Notice to End Tenancy was personally served on the Tenant on August 26, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord in early September 2019 as the landlord acknowledged service. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated August 26, 2019?
- b. Whether the tenants are entitled to an order that the landlord comply with the Act, Regulations and/or tenancy agreement?
- c. Whether the tenants are entitled to an order suspending or setting conditions on the landlord's right to enter the rental property?

Background and Evidence:

The tenancy began approximately 10 years ago. It involves the rental of a manufactured home park pad. The present rent is \$455 per month payable in advance on the first day of each month.

Grounds for Termination:

The Notice to End Tenancy relies on the following grounds:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
- 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 relies on the following evidence:

- Witness #1 testified that on September 5, 2019 he noticed a young man in the park who he did not recognize. Upon asking whether he was lost the young man became agitated and threatening. He subsequently became aware that he was the boyfriend of the tenant's 30 year old daughter and was living in the rental unit. He felt very uncomfortable and concerned for his safety.
- Witness #2 testified that that in February 2019 he was removing snow near the rental unit and the boyfriend came out and demanded that he stop putting snow on their property. He subsequently called the police alleging that I had tried to hit him. There was no truth to this allegation and the police did nothing further. On August 26, 2019 the boyfriend started threatening me and had a metal bat in his hand.
- Witness #3 testified that in 2018 he saw the boyfriend in someone else's car. He did not know who he was at the time. However, others in the park told him that it was the boyfriend of the daughter of the tenants.
- The landlord HC gave the following evidence:
 - The tenants have unauthorized occupants living with them in the park.
 - The unauthorized occupants are the tenant's 30 year old daughter and her boyfriend.
 - The daughter and boyfriend have used threatening and abusive language directed at her and her staff.
 - The landlord produced an audio file of a phone message left by the daughter that was very abusive and disturbing. The audio file was uploaded on October 10, 2019 and I infer that it took place after the one month Notice to End Tenancy was served on the Tenants.
 - In March 2019 the tenants told her that their daughter was no longer welcomed in their home and they were calling the RCMP to have her removed. She does not feel safe because of the action of the tenant's daughter and her boyfriend.

- The tenant has received many warning letters for failing to maintain their home and yard.

The tenants testified their going to have to get a restraining order against their daughter and her boyfriend. Their daughter has mental health issues. One of the tenants is disabled. They testified they want to remain in the rental unit in the park. They have no other place to move to and they would be homeless.

Analysis:

After carefully considering all of the evidence I determined the landlord has failed to establish sufficient cause to end the tenancy for the following reasons:

- The landlord has the burden of proof to establish sufficient cause based on a balance of probabilities.
- In a case such as this the arbitrator is being asked to determine the validity of a Notice to End Tenancy as of the date of the Notice. Thus an arbitrator is not permitted to consider conduct that occurred after that date in this hearing.
- There is insufficient evidence to establish that the tenants' conduct is such as would give grounds to end the tenancy.
- However, the tenants are responsible for the actions of those they have permitted on the property.
- The conduct of the tenant's daughter and her boyfriend are unreasonable and disturbing and it comes very close to being grounds to end the tenancy. However, I determined it was not appropriate to end the tenancy at this time for the following reasons:
 - The problems were not caused by the tenants themselves.
 - The tenants indicated that it was their intention to get a restraining order against their daughter and boyfriend. I determined it was appropriate to give the tenants a change to bring the conduct of their daughter and her boyfriend under control.
 - The termination of a tenancy especially when dealing with a manufactured home has significant consequences and an arbitrator should grant an Order of Possession only in the clearest case.
 - I have considered that the tenant's daughter has mental illness challenges. Also one of the tenants is on disability.
 - It does not appear there is a written tenancy agreement between the parties that identifies who are the tenants and occupants. The Application for Tenancy provided in 2009 indicates there are to be 4 occupants in the rental unit. The tenants have agreed to follow the Park Rules. .
 - I do not accept the submission of the landlord that the allege failures of the tenants to properly maintain their home and the pad amount to a breach of a material term of the tenancy.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

However, the tenants are put on notice that they are responsible for the conduct of individuals they have allowed onto the property. This includes the conduct of their daughter and her boyfriend. If further problems continue it may very well be that the landlord might be successful in ending the tenancy pursuant to a subsequent Notice to End Tenancy.

I dismissed the tenants application for an order that the landlord comply with the Act, Regulations and/or tenancy agreement and for an order suspending or setting conditions on the landlord's right to enter the rental property.

This decision is final and binding on the parties.

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 5, 2019

Residential Tenancy Branch