



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GRAPPA INVESTMENTS CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: ET FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* (the Act). The landlord applied for an urgent application about a tenant who poses an immediate and severe risk to the rental property, other occupants or the landlord, and to recover the cost of the filing fee.

An agent for the corporate landlord KH (agent), the owner of the park LB (owner) and an office manager KS (office manager) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me.

I have reviewed all 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.

Preliminary and Procedural Matter

The landlord confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them. As the landlord did not have an email address for the tenants, the decision will be sent by regular mail to the tenants.

Issues to be Decided

- Has the landlord provided sufficient evidence to support that the tenancy should end early due to a tenant who poses an immediate and severe risk to the rental property, other occupants or the landlord?
- If yes, is the landlord entitled to the recovery of the cost of the filing fee?

Background and Evidence

A copy of an application for tenancy was submitted in evidence. The agent confirmed that the tenancy began on May 8, 1990.

In the landlord's application they write:

Tenant has broken sewer pipe. Plumber called to determine who is responsibility to fix. Determined it is the tenant. Health Dept. called they issued letter and fined tenant 3 times as they have not fixed issue.

The agent testified that the tenant stated in April that they would fix the sewage issue under the manufactured home. On April 14, 2020, the agent stated that a plumber was called and said that it is the tenant's responsibility. I note there was no documentary evidence from the plumber submitted for my consideration. The agent stated that the plumber advised them that the issue must have been there for at least 6 months and that there is raw sewage underneath the manufactured home and on the subfloor of the manufactured home. The agent stated that by April 17 and 20, 2020, due to the tenant still not having fixed the sewage issue, a health inspector, Mr. L (inspector) was called. The agent stated that the inspector advised the tenant to hire Roto-Rooter and to place lime down under the manufactured home, the latter of which the tenant did which took care of some of the smell but not the entire smell.

The agent stated that the inspector returned on April 27, 2020 and issued another fine and that by May 11, 2020, the tenant claimed the sewage issue was fixed, and by May 19, 2020, the inspector advised the tenant to remove some water and fill a hole under the manufactured home, which was not completed by the next inspection on May 20, 2020. The agent stated that since May 20, 2020, which was six days before the hearing, the tenant had done the work required to satisfy the inspector. The agent also stated that the landlord continues to seek an early end of the tenancy as the landlord believes that if future issues arise, the tenant will not respond in a timely manner.

The parties were advised that based on the testimony I had heard, that I find there currently is insufficient evidence to grant the landlord's application. The owner objected to my statement by stating to look at the photo evidence, which I stated to the parties, now contradicts the testimony of the agent who confirmed that the inspector was satisfied with the tenant's response to the April 23, 2020 letter submitted in evidence.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, to end the tenancy early without having to wait for a 1 Month Notice to End Tenancy for Cause is a higher test to meet under section 49 of the Act and that the landlord has the onus of proof. Secondly, I find that the agent's testimony contradicts the testimony of the owner during the hearing as the owner claims that sewage remains an issue under and inside the manufactured home, yet the agent confirmed that the inspector was satisfied with the tenant's actions at the last inspection. As a result, and without any further letter from the inspector advising that the issue continues to be a health hazard, I find the landlord has failed to meet the burden of proof.

I have also considered that there is no documentary evidence from the plumber for my consideration and no letters from other occupants submitted complaining about the smell from the rental site. Based on the above, I am not satisfied that it would be unfair for the landlord or other occupants of the park to wait for a 1 Month Notice for Cause to take effect as per section 49(2)(b) of the Act. Furthermore, I find that it would not be reasonable to end the tenancy based on whether an issue in the future arises. Therefore, I dismiss the landlord's application due to insufficient evidence.

The tenancy shall continue until ended in accordance with the Act.

Conclusion

The landlord's application fails due to insufficient evidence.

The tenancy shall continue until ended in accordance with the Act.

This decision will be emailed to the landlord and sent by regular mail to the tenants.

I do not grant the filing fee as the application failed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 26, 2020

Residential Tenancy Branch