



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *CNC, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Manufactured Home Park Tenancy Act*. The landlord served the tenant with a one month notice to end tenancy for cause. The tenant applied for an order to set aside the notice to end tenancy. The tenant also applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves.

As both parties were in attendance, I confirmed service of documents. The tenant's evidence consisted of the notice to end tenancy served on her by the landlord. The landlord served her evidence to the tenant by registered mail on July 24, 2020, just three days before the hearing. The tenant stated that she had not received the landlord's evidence. I find that the landlord did not serve evidentiary materials in accordance with sections 88 and 89 of the *Act*, and therefore the landlord's evidence was not used in the making of this decision.

Issues to be decided

Does the landlord have cause to end the tenancy? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started in January 2019. The monthly rent is \$400.00 payable on the first of the month. On June 25, 2020, the landlord served the tenant with a notice to end tenancy for cause. The tenant disputed the notice in a timely manner.

The notice was served for the following reasons:

1. 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
2. Tenant has engaged in illegal activity that has or is likely
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

The landlord stated that the tenant uses an ATV which is noisy and disturbs the other residents of the home park. On May 10, 2020 the landlord gave the tenant a verbal warning and a written warning on May 25, 2020. The landlord stated that the tenant continues to create noise disturbances.

The tenant agreed that she received the warnings and stated that since then she has been walking her ATV to the main road before starting it up. The tenant also stated that she has requested her friends not to ride their ATVs to the home park, when they visit.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and/or has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

The tenant stated that she has taken steps to ensure that she does not create noise disturbances in the park from using her ATV on the landlord's property and has also requested the same of her visitors.

The landlord has not filed evidence to support her reasons for wanting the tenancy to end. I further find that the landlord has not proven that the tenant continues to create noise disturbances despite the written warning. The landlord has also not proven her allegations of illegal activity by the tenant.

Even though the tenant agreed that the ATV is noisy, based on the above, I am not satisfied that the actions of the tenant justify bringing this tenancy to an end.

Accordingly, I allow the tenants' application and set aside the landlord's notice to end tenancy dated June 25, 2020. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from giving the landlord reason to issue warning letters to the tenant. I find it timely to put the tenant on notice that, if another notice to end tenancy is issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

Since the tenant is successful in her application, I award the tenant the recovery of the filing fee.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

The tenants may make a one-time deduction of \$100.00 from a future 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: July 27, 2020

Residential Tenancy Branch