



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 40;
- authorization to recover his filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant, R.B. did not attend and was unrepresented. The tenant, C.B. (the tenants) stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on August 26, 2020. Both parties confirmed the landlord served the tenant with the submitted documentary evidence via courier on September 1, 2020. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?
Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that on August 14, 2020, the landlord served the tenant with the 1 Month Notice dated August 14, 2020 in person. The 1 Month Notice sets out an effective end of tenancy date of October 31, 2020 and that it was being given as:

- the tenant or 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;
 - put the landlord's property at significant risk; or
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of cause states:

Repeatedly parks outside their designated parking space, infringing on neighbors ability to use their own designated parking spaces.

[reproduced as written]

The tenants provided written details stating:

We have never parked outside the boundaries of our site Prior to signing the tenancy agreement we were not designated a parking space Only after arbitration hearing (file number listed on cover of this decision) did parking become an issue Landlord is trying to force us out so she does not have to fulfill outstanding order #(file number listed on cover of this decision).

[reproduced as written with notation]

The landlord provided affirmed testimony that the tenants are parking in the neighboring tenant's park site, preventing access to that neighbor from parking. The landlord argued that the tenant is affecting the quiet enjoyment of the neighbors on site #7 despite several warnings. The landlord referred to an overhead view photograph labeled "L18" which shows the tenant's site #8 next to the affected neighboring tenant at site#7. The landlord stated that the tenants keep parking so close to the neighbor's parking space on site#7 that the passenger must get out before they park the vehicle. The landlord stated that the 3 feet section between site #7 and site#8 belongs to the neighboring tenant of site#7. The landlord argues that the tenants want their own 3 feet section bordering with site#9 kept clear so the tenants must know the site extends by 3

feet beyond the home to the next neighbor site. The landlord referenced "L25" a notice dated December 16, 2018 which states in part,

Please allow me to clarify an old rule in this park so all residents can live side by side without conflict...But, what is important that you must know is that everyone site has three feet on the opposite side of your home from the side with your yard that you recreate on. The purpose of the three feet is so you can wash windows maintain the skirting; siding;etc...

The tenant argues that the 3 feet section is for access. The tenants stated that they have been parking in this manner since the tenancy began in 2017.

The landlord was asked during the hearing of the lot boundaries of the park. The landlord stated that the tenants refused to sign in acknowledgement of their boundaries for lot site#8. The landlord did not submit a copy of the proposed lot boundaries. The landlord confirmed that there are no maps or details provided that could show the agreed upon lot boundaries for this tenancy.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Both parties confirmed the landlord served the tenants with the notice of hearing package in person on August 14, 2020. The landlord's 4 selected reasons for cause are all in reference to the tenants parking.

In this case, the landlord argued that the tenants are parking their vehicles in such a way that infringes on their neighbors right to park in front of their site. The tenant has argued that the area in front of his walkway is on his lot site#8 and does not belong to lot site#7. The landlord has referenced several overhead view photographs which describe the spacing between site#7 and site#8.

I find that the landlord has failed to provide sufficient evidence that the tenants are parking in an area beyond that allowed for lot site#8. Despite the landlord's warnings as shown in her notice dated December 16, 2018, the landlord failed to provide any conclusive evidence that the lot boundaries are as claimed. On this basis, the landlord's notice to end tenancy is set aside and cancelled. The tenants' application is granted. The tenancy shall continue.

The tenants having been successful are also entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenants to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenant's application is granted.

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: October 08, 2020

Residential Tenancy Branch