

DECISION

Dispute Codes ET

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to end the tenancy early and obtain an Order of Possession.

Service of the hearing documents, by the Landlords to the Tenants, was done in accordance with section 82 of the *Act*, sent via registered mail on August 31, 2010. The Tenants confirmed receipt of the hearing package and the fifty pages of evidence submitted by the Landlords. The Landlords confirmed receipt of the twenty pages of the Tenants evidence with four photographs.

The Landlords, the Resident Manager and the Tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Are the Landlords entitled to end the tenancy and obtain an Order of Possession in accordance with section 49 of the Manufactured Home Park Tenancy Act (the *Act*)?

Background and Evidence

The month to month tenancy agreement was effective May 1, 2008. Rent is payable on or before the first of each month in the amount of \$330.00. There are currently no rental arrears.

The Landlords provided testimony that they are seeking an early end to this tenancy because of their water usage regulations. The manufactured home park water is supplied by a well and “their contract is clear about water usage”. They argued that the

tenancy agreement restricts the Tenants to four occupants because of the strain on water usage and the sewage system.

The Landlords referred to section 1(e) of their park rules, which was included in their evidence, which states "Please use water responsibly. Excessive use of water is not permitted, such as washing of streets commercial vehicles, guest vehicles, or overnight watering of lawns (please hand-water flower gardens and shrubs)". They referred to the 1999 Design Guidelines for Rural Residential Community Water Systems, provided in their evidence, in support of their calculation of the estimated consumption of water per person. They argued that the Tenants often have two to three guests over for dinner, have had numerous kids visiting for the entire day, and they know that cars have been parked at the Tenants over night which leads the Landlords to believe the Tenants are allowing guests to stay overnight. They argued that when the Tenants have guests their water consumption increases because they have to do more dishes and their guests use the washroom which puts strain on not only the water but also the sewage system.

The Landlords stated that the male Tenant has three children from a previous relationship that come to visit him. In the past the Tenants have allowed these three children to visit longer than 21 days as provided in the tenancy agreement; however this year they have kept to the rule of two weeks. The female Landlord stated "I have agreed to allow them to have them for three weeks" She stated that she told the Tenants that this would be the extent to their visitors. They continue to break her visitor rule because they have had up to twelve kids visiting and the Landlord thinks they stayed over for one night which increases their water usage.

The Landlords referred to section 5 of their tenancy agreement, as provided in their evidence, which outlines the agreement pertaining to guests and permanent occupants. The Landlords argued that the Tenants have guests attending for meals almost every day for two months which they constitute as having boarders which are not allowed as stipulated in their tenancy agreement. When asked if she knew dates the guests visited

or how she knew how long they have been coming over for the Landlord stated that she did not have that information.

The Landlords stated that pages 23 through to 33 of their evidence consist of copies of warning or breach letters issued to the Tenants. They argued that the Tenants have even allowed a guest to wash his vehicle. The Landlords were not able to provide a date or time when this alleged incident occurred and they confirmed they did not issue a warning letter to the Tenants for this infraction. They referred to page 44 of their evidence which is a copy of a letter written by another tenant in the park which states that he has seen "suspicious activity coming from" the Tenants' unit, that someone told him they were living there, and that he witnessed this person washing a vehicle. The Landlords could not provide dates of when these alleged events took place and when asked what "suspicious activity" this tenant was referring to the Landlords advised there are strange people coming in and out of the park all the time ignoring the Landlord's sign posted at the entrance of the park which refers to guests accessing the park. The Landlord was not able to provide information pertaining to these "strange people" entering the park.

The Resident Manager provided testimony pertaining to their request to end the tenancy early stating there are three main points where the Tenants have repeatedly broken the rules and have not complied after being issued warning letters. First they have too many guests, second they have too many children over, and thirdly there is concern that the Tenants and all their guests are consuming too much water which is putting stress on the well water system.

It has been a very dry summer and their guests have been seen washing a car. The Resident Manager confirmed that he did not have firsthand knowledge of the car washing incident but that he received the information from another tenant. No warning or breach letters were issued to the Tenants pertaining to the alleged incident of a guest washing a vehicle.

The Resident Manager stated that the Tenants are not to be having loud music or parties. There have been incidents where the police have had to be called to the site because of complaints of loud noise, drinking, parties, and threats. His wife actually called the police about two months ago because there was “scary, loud, yelling and swearing” coming from the Tenants’ site. No notices or warnings were issued to the Tenants relating to this incident.

The Resident Manager confirmed that he has never issued the Tenants notices or breach letters and that only the Landlord issued notices. He stated that the urgency in getting these Tenants evicted is because they are “disturbing people of the park” and they have “never complied” after notices were issued.

The female Landlord confirmed that a 1 Month Notice to End Tenancy for Cause was signed and dated August 11, 2010, however she actually posted the Notice to the Tenants’ door on August 10, 2010. She explained that when she completed the Notice she thought she would not be travelling to the park until August 11, 2010, however she travelled there a day earlier.

The Tenants testified and confirmed that they have been having problems with their neighbor and have filed complaints with the Landlords however they refuse to do anything about it. The male Tenant confirmed that one of his guests did wash a vehicle on his property but that it was the Tenant’s vehicle and not the guest’s vehicle.

Analysis

In making an application for an early end to this tenancy, under Section 49 of the Act, the Landlords first have the burden of proving that there is cause for ending the tenancy, such as placing the landlord’s property at significant risk; and secondly by proving that it would be unreasonable or unfair to the Landlord or other occupants to wait for a 1 Month Notice to End Tenancy for Cause under section 40 of the Act to take effect.

After careful consideration of all of the testimony and documentary evidence I am not satisfied that the Landlords have met the burden of showing that there is cause to end this tenancy based on alleged water consumption of the Tenants and their guests, pursuant to section 40 of the Act, nor am I satisfied that the Landlords have proven that it would be unreasonable or unfair for a one month Notice to End Tenancy to take effect pursuant to section 49 of the Act had they proven cause.

The Resident Manager's testimony supporting the urgency in obtaining an Early End to Tenancy speaks to the Tenants "disturbing people of the park" and that they have "never complied" to notices which contradicts the Landlords testimony which pertains to the Tenants' water consumption.

I make these findings for several reasons. First of all, I am not satisfied that the Tenants have put the Landlord's property, more specifically the water supply, at significant risk. The Landlords argue that this tenancy must be ended early due to the Tenants' alleged consumption of water resulting from the visitors who attend the Tenants home.

I do not accept the Landlords argument that the tenancy agreement stipulates the restriction of occupants is based on water consumption. Section 10 e) of the tenancy agreement provides "that the Tenant will not permit water to be wasted or to burden the septic system with water, or to permit leaks in the water supply system owned by the Tenant" and section 1.(e) of the Park Rules stipulates "Please use water responsibly. Excessive use of water is not permitted, such as washing of streets, commercial vehicles, guest vehicles, or overnight watering of lawns (please hand-water flower gardens and shrubs). Section 3 (e) of the tenancy agreement states that rent includes water and sewage disposal; therefore it is the responsibility of the Landlord to provide water and sewage to all rental units.

I note that the Landlords have substantiated their request to end the tenancy early based on estimated amounts of water consumption that they calculated using a formula

obtained from a 1999 water report which include the number of guests and days visited at the rental unit. The Landlords were not able to prove how they determined the number of days or number of guests they used in their calculation which was provided in their evidence.

Based on the aforementioned, I find the Landlords have failed to provide sufficient evidence to prove cause for ending this tenancy early under section 49 of the Act therefore I dismiss the application.

Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 16, 2010.

Dispute Resolution Officer