Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OPC, FF

Introduction

This was a cross-application hearing.

The tenants applied to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee cost.

The landlord applied requesting an Order of possession based on a 1 Month Notice to End Tenancy for Cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant's application was amended to reflect the landlord's correct legal name.

The parties agreed that the tenants had been given a 1 Month Notice to End Tenancy for Cause, issued on October 30, 2012. The tenants applied to cancel that Notice within the required time-frame. The parties also agreed that on November 23, 2012, the landlord issued a 2nd 1 Month Notice, which was meant to amend the original Notice issued. I then determined that the October 30, 2012 Notice was of no force or effect and that this hearing would consider the November 23, 2012 Notice.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on November 23, 2012 be cancelled?

Is the landlord entitled to an Order of possession for the site?

Are the tenants entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 9, 2010; site rent is $376.00 due on the first day of each month. A copy of the Park Rules was supplied as evidence.

The landlord and tenants agreed that a 1 Month Notice to End Tenancy for Cause was served on the tenants indicating that the tenants:

- allowed an unreasonable number of occupants in the unit;
- that the tenants or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord;
- that the tenants or a person permitted on the property by the tenants have put the landlord's property at significant risk; and

That the tenants have engaged in illegal activity that has, or is likely to:

- adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and

That the tenants have:

- breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord said that the tenants built a shed on the site, in contravention of local Bylaws. The Park Rules include a term that requires all improvements be constructed under the direction of the local Building Inspector. The landlord had written a letter, dated June 21, 2012; which allowed the tenants to construct a 10 X 16 shed for personal use as a workshop, as long as the tenant observed all noise by-laws.

The tenants said that the June 21, 2012 letter provided him with the required permission and that the landlord had used his right, as indicated on the Park Rules, to "relax, waive or amend" the rules. The tenant said he had not been given any notice telling him to remove the shed until an October 5, 2012 letter was delivered.

There was no dispute that the tenant has a license to grow medical marijuana, for his own use, and that the tenant had chosen to grow marijuana in the shed. The tenant said that he was given an October 5, 2012 letter that directed him to cease growing the marijuana. The letter, issued by counsel for the landlord, indicated the landlord would inspect the site on or before October 17, 2012, to ensure the tenant had complied. The landlord confirmed that this inspection did not occur.

The landlord said that in early November he hired a well drilling crew to work on the adjacent site. The landlord testified that he did not return to inspect the shed for marijuana as the tenant had threatened him. The tenant confirmed that he had been upset with the landlord, as the landlord had disclosed his marijuana grow license to the drilling crew workers; the tenant's friend who was a supervisor on the site had called the tenant to tell him this information had been disclosed. The tenant said this disclosure of personal information had placed them at risk, as he did not know if any of those workers might attempt to enter his home, knowing that he might have marijuana. The tenant said that he was upset but that he had not threatened the landlord; only that he called him a coward. The tenant agreed that he had told the landlord that he could not come onto the property.

The landlord said that a prospective occupant of an adjoining site refused to rent the site as they could smell marijuana coming from the tenant's site.

The tenant said that his neighbour smokes marijuana and that the smell of marijuana could easily be coming from that home. The landord responded that the neighbour had been away for the past several months.

The female landlord said she is afraid of the tenant and does not want him coming to her home.

The tenant stated that after he received the October 5 letter he removed the marijuana plants and that he will no longer grow marijuana on the site; saying that the prohibition was "crystal clear."

The landlord supplied copies of 2 letters written by other occupants of the Park; both complaining about the tenant's marijuana plants; the smell of marijuana, drug dealing and the amount of traffic going to the tenant's site. On September 22, 2012 the tenant was alleged to have an unreasonable number of people at his home; the tenant said this gathering it was due to a surprise birthday party that had been arranged several days following the tenant's birthday. The landlord confirmed that none of these complaints were fully investigated or discussed with the tenant.

The parties discussed entry to the site; the landlord wanted unrestricted access in order to inspect the shed. The tenant said he would not block the landlord from access, if proper notice in accordance with the Act, was given.

The landlord requested an Order that the tenant not grow marijuana in the shed.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence in support of the reasons on the 1 Month Notice to End Tenancy for cause issued on November 23, 2012.

The landlord supplied 2 letters of complaint written by other occupants of the park; none of the complaints were investigated nor were the tenants given any information in relation to those complaints until the October 5, 2012 letter was issued. The landlord should be cautioned that complaints alleging a serious crime such as drug dealing, in the absence of any supporting evidence, are unreasonable and may not form grounds for eviction. I have given the 2 letters of complaint no weight, as they contain unproven allegations that were not properly investigated for veracity.

There was no evidence before me that the tenant threatened the landlord or that they have had an unreasonable number of occupants on the site. Tenants are allowed to have guests attend at their home; as long as the guests do not unreasonably disturb other occupants. I find that a surprise birthday party is not an unreasonable gathering. The tenant admitted being upset in relation to the disclosure of personal information that could have placed them at some risk; I find that the tenant's reaction was not unreasonable, but that perhaps a written response to the landlord would have been more appropriate.

The landlord has made a number of unfounded allegations; the landlord failed to inspect the property by October 17, 2012, he date indicated in the October 5 letter; he did not investigate allegations made by others in the Park and he did not speak with the tenants about any concerns. By October 17, 2012 the tenant had not yet made the alleged threat to the landlord; yet there was no evidence that any entry was attempted by the landlord in October, to complete the inspection for marijuana plants

Therefore, I find that the tenant did comply with the instructions given and has removed the marijuana plants, as detailed in his affirmed testimony.

Therefore, based on the evidence before me and the balance of probabilities, I find that the 1 Month Notice to End Tenancy for Cause issued on November 23, 2012 is of no force and effect. This tenancy shall continue until it is ended in accordance with the Act.

I find, based on the June 21, 2012 letter written by the landlord, that the Park Rules were relaxed, as allowed, and that the tenant was permitted to build the shed, as it stands. If the landlord believes that the shed now contravenes a Bylaw, given the landlord's original approval for construction, the landlord should be cautioned that the cost of removal could be claimed as compensation by the tenants.

The parties will adhere to section 23 of the Act:

Landlord's right to enter manufactured home site restricted

23 *A landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

*(i) the purpose for entering, **which must be reasonable**;*

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord has an order of the director authorizing the entry;

(d) the tenant has abandoned the site;

(e) an emergency exists and the entry is necessary to protect life or property;

(f) the entry is for the purpose of collecting rent or giving or serving a document that under this Act must be given or served.

(Emphasis added)

The tenant does not need to be home at the time of entry. The landord was warned that entry to the site must be for a reasonable purpose only and that repeated entry, in the absence of a reasonable purpose could form the basis for a loss of quiet enjoyment by the tenants. I have declined to make an Order allowing entry to the site which does not comply with the Act; one may not contract out of the legislation.

The tenants agreed that marijuana will not be grown on the site; either in the shed or the home. An Order is not required, as if the tenants do breach this understanding; the landlord is at liberty to issue another Notice ending tenancy. The tenants have said it is "crystal clear" the landlord has not provided permission for them to grow the marijuana on the rented site.

As the tenant's application has merit I find that they are entitled to the $50.00 filing fee which may be deducted from the next month's rent due.

Conclusion

The 1 Month Notice to End Tenancy for Cause issued on November 23, 2012 is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

The tenant's are entitled to filing fee costs.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 55(1) of the *Manufactured Home Park Tenancy Act.*

Dated: December 24, 2012.

Residential Tenancy Branch