Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Retire West Communities
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was originally convened on December 3, 2015. For medical reasons the tenant requested an adjournment and the landlord agreed. The hearing was reconvened on January 21, 2016. Both hearing were attended by both agents for the landlord and the tenant. As well, the tenant had the support of a different advocate at each hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 40, 60, and 65 of the *Manufactured Home Park Tenancy Act (Act).*

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 48(1).

Background and Evidence

The parties agreed the tenancy began in June 1999 and continues at a current monthly rent of $303.00 due on the 1st of each month. Neither party provided a copy of a tenancy agreement.

The parties submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause dated October 21, 2015 with an effective vacancy date of October 31, 2015 citing a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the Notice was actually issued on September 21, 2015 and served personally to the tenant on the same date. The tenant confirmed that she received the Notice on September 21, 2015.

The landlord testified that the tenant has been parking a car on the lawn of her pad site which contrary to the park rules. The landlord also testified that the tenant and her husband have been washing a "port-a-potty".

He stated that despite repeated requests and warnings to move the car and stop washing the "port-a-potty" the tenant continues to do so.

Both parties have submitted copies of the park rules. The tenant submitted park rules dated June 1999. The landlord submitted park rules dated June 2014. As noted above, neither party provided a copy of a tenancy agreement.

The landlord testified that the parking of the car on the lawn and without a valid license or insurance violates the current park rules. The landlord also submits that the parking of the car on the lawn and the washing of the "port-a-potty" violates Part 6(b) of the tenancy agreement.

In note also that the park rules (June 2014) provide a limit of 2 cars per home site; that all vehicles must be operational and have a current license and insurance; that no parking is allowed on park lawns or home lawns; and that no repairs can be done on home sites.

The landlord read into the hearing the clause which expanded on the tenant's obligations under Section 26 of the *Act,* which states: "A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas and a tenant must repair damage to the manufactured home site or common areas that is caused by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant."

The landlord submitted that by parking the car on a tarp on the lawn the tenant has caused the grass to die and despite repeated attempts on the part of the landlord to get the tenant to remove the car she continues to fail to comply. In addition, the landlord submitted that the cleaning of the "port-a-potty" causes environmental damage to the park.

The landlord provided no explanation as to why they believed Part 6(b) of the tenancy agreement was a material term.

Analysis

Section 40 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Residential Tenancy Policy Guideline #8 defines a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the tenancy agreement.

The guideline goes on to say that to determine the materiality of the term I must focus on the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. The burden is on the party relying on the term to provide evidence and argument supporting the proposition that the term was material. The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question.

I accept that the tenant **may** be in breach of the current park rules in regard to parking. However, in the absence of a copy of the tenancy agreement and any substantive submissions on the materiality of the term Part 6(b) from the landlords I find the landlord has failed to establish the tenant has breached a material term of the tenancy agreement.

Conclusion

Based on the above, I cancel the 1 Month Notice to End Tenancy for Cause dated October 21, 2015 issued by the landlord and order the tenancy remains in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 60 in the amount of **$50.00** comprised of the fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment, pursuant to Section 65(2) of the *Act*.

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: January 21, 2016

Residential Tenancy Branch