



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEACE ARCH RV PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *CNC, OPC, OR, CNR, OLC, LRE, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Manufactured Home Park Tenancy Act*. The landlord applied for an order of possession pursuant to notices to end tenancy for cause and for unpaid rent. The landlord also applied for a monetary order for unpaid rent and the filing fee.

The tenant applied for an order to cancel the notices to end tenancy and for an order directing the landlord to comply with the *Act*. The tenant also applied to restrict the landlord's right to access the rental unit and 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 tenants ("tenant") represented themselves. The landlord ("landlord") was represented by their agents.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Does the landlord have reason to end this tenancy or should the notices to end tenancy be set aside? Is the tenant entitled to an order directing the landlord to comply with the *Act*? Are the parties entitled to the recovery of their filing fee?

Background and Evidence

The tenancy started in 2011. The current pad monthly rent is \$590.00 payable on the first of the month. The landlord collected a security deposit of \$100.00 which is in contravention of section 17(2) of the *Manufactured Home Park Tenancy Act*. Section 17(2) states that a landlord must not require or accept a security deposit in respect of a manufactured home site tenancy. Section 17(3) states that if a landlord accepts a security deposit from a tenant, the tenant may deduct the amount of the security deposit from rent or otherwise recover the amount.

On October 16, 2018, the landlord served the tenant with two notices to end tenancy – a ten day notice for unpaid rent and a 30 day notice for cause. The tenant applied to dispute the notices in a timely manner.

The landlord agreed that the tenant did not owe rent but stated that the tenant was required to pay storage fees for a locker that was stored outside his mobile home. The tenant filed a copy of a letter from the landlord dated March 25, 2015 which clearly states that the landlord will not charge for storage on condition that the tenant relocates some shelving from the front of the property to the back. The tenant complied and provided photographs to support his testimony. The landlord agreed that the tenant had relocated the shelving in 2015 and it is still located at the back of the mobile home as of this date.

On October 16, 2018, the landlord also served the tenant with a 30 day notice to end tenancy for cause. The reasons for the notice are:

- The tenant is repeatedly late paying rent.
- The tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- 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 stated that there are complaints against the tenant from the other occupants of the home park regarding noise, lack of proper attire and visiting when not invited. The landlord agreed that there is no dress code in the mobile home park but stated that the tenant wears inappropriate clothing. The tenant responded by saying that in summer most people make their way to the pool dressed in swim suits. The tenant denied creating noise disturbances and visiting other tenants when not invited.

The landlord filed two letters of complaint from other tenants of the home park. The letters are undated and refer to the slamming of doors by the tenant, speeding inside the park and blocking roadways by stopping in the middle of the road and getting out of the vehicle to visit with friends. The tenant denied all the allegations and also stated that the landlord visits the rental unit without providing proper notice.

Analysis:

10 day notice to end tenancy

The landlord agreed that the tenant does not owe rent at this time. The landlord had asked the tenant to pay additional storage fees which the tenant refused to pay which prompted the landlord to serve the tenant with a 10 day notice to end tenancy.

Based on the documents filed into evidence, I find that in a letter dated March 25, 2015, the landlord agreed not to charge the tenant any storage fees on condition that the tenant moved some shelving to the back of the mobile home. The tenant has proven that he complied with the landlord's request in 2015. The tenant filed photographs that indicate that as of this date the shelving is still in the location that the landlord had requested.

Based on the testimony of both parties and the photographs filed into evidence, I find that the landlord had agreed in writing approximately three years ago, not to charge storage fees and as of this date the shelving is still at the back of the mobile home as requested by the landlord. Therefore I find that the landlord must keep her word about not charging extra storage fees.

Based on the above, I find that the 10 day notice to end tenancy must be set aside.

30 day notice to end tenancy

In order to support the notice to end tenancy, the landlord must prove the grounds alleged, namely

- The tenant is repeatedly late paying rent.
- The tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant has provided sufficient evidence to support his testimony that he pays rent on time. The landlord agreed that the tenant paid rent on time.

The landlord has alleged that the tenant creates noise disturbances, speeds within the mobile home park and sometimes blocks road ways by stopping his vehicle in the middle of the road way. The tenant denied all allegations. The landlord filed two undated hand written notes into evidence which allege the above mentioned activities. Even if the above allegations are true, I am not satisfied that the actions of the tenant justify bringing this tenancy to an end.

The landlord requested the tenant to move the shelving to the back and the tenant complied with the landlord's request. I find that the tenant has corrected any breach of a material term of the tenancy agreement within a reasonable time.

Accordingly, I allow the tenant's application and set aside the landlord's notice to end tenancy for cause, dated October 16, 2018. As a result, the tenancy shall continue in accordance with its original terms.

The landlord is hereby notified that she must abide by section 23 of the *Manufactured Home Park Tenancy Act* which provides information on the landlord's right to enter a manufactured home site.

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.

Since the landlord has not proven her case and the notices to end tenancy are set aside, the landlord must bear the cost of filing her own application.

The tenant is successful in his application to dismiss the notices to end tenancy and therefore I award the tenant the recovery of the filing fee. The tenant may make a one-time deduction of \$100.00 from a future rent.

Conclusion

The notices to end tenancy are set aside. The tenancy will continue.

The tenant may make a one-time deduction of \$100.00 from a future rent towards the recovery of the filing fee.

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: November 27, 2018

Residential Tenancy Branch