



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 an Application for Dispute Resolution by the Tenant filed under the *Manufactured Home Park Tenancy Act*, (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on March 29, 2019, and to recover the filing fee for his application. The matter was set for a conference call.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Should the Notice issued on March 29, 2019, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the recovery of his filing fee for this hearing?

Background and Evidence

The parties testified that the tenancy began in November 1981 and that the Tenant is paying pad rent in the amount of \$415.00 per month. The Tenant testified that he could not recall if he had paid a security deposit, the Landlord testified that no security deposit had been collected for this tenancy.

The parties agreed that the Landlord had served the Notice to End tenancy to the Tenant on March 29, 2019, indicating that the Tenant was required to vacate the rental unit on April 30, 2019. The reasons checked off by the Landlord within the Notice are as follows:

- *Tenant or a 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.*
- *Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to:*
 - *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*
- *Tenant has not done repairs of damage to the unit/site.*

The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant had allowed his trailer to become so run down and in such a state of disrepair that it was no longer safe to have the mobile home in the park. The Landlord testified that the Tenant's mobile home required extensive repairs; including the water pipes, removal of a couch on the front porch, and the removal of cats and rodents living in the mobile home.

The Landlord testified that they do an inspection of the mobile homes in the park every year and that the Tenant had been given a Notice every year since 2009, that indicated that the Tenant's mobile home was seen to be deficient in health and safety standards. The Landlord testified that the Tenant has refused to make any of the indicated repairs as required. The Landlord submitted four inspection notices into documentary evidence; from 2009, 2010, 2011, 2012.

The Landlord testified that the Tenant's refusal to conduct regular repairs to his mobile home has led to the home's deterioration to the point that it is no longer safe for the home to be in the park. The Landlord also testified that written notices had been issued yearly, between 2013-2018 but that he had not submitted them into evidence.

The Tenant testified that he had not received a written notice from the Landlord since 2013, regarding the condition of his mobile home and that he understands that the home requires some repair, but that he is working on those repairs and just needs some time to get the work completed. The Tenant also testified that the notice he had received between 2009 to 2012 had only indicated that he needed to clean up the area and that none of those notices had recorded anything about his mobile home being in unsatisfactory condition.

Additionally, the Tenant testified that he will remove the couch from his front porch and that he will have the siding on the mobile home repainted and repair the skirting. The Tenant testified that he did not feel that his tenancy should end for these minor things.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the Notice on March 29, 2019. Pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. I find the Tenant had until April 8, 2019, to file his application to dispute the Notice. I have reviewed the Tenant's application, and I find that the Tenant filed to dispute the Notice on April 5, 2019, within the statutory time limit.

During the hearing, I heard contradictory testimony from both parties regarding the condition of the mobile home and whether or not the Tenant had received unsatisfactory inspection condition reports from the Landlord between 2013 to 2018.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

As these proceedings were convened to dispute a Notice to End Tenancy issued by the Landlord, and a landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice. I find that the Landlord has the burden to provide sufficient evidence over and above his verbal testimony to establish the validity of his Notice.

After careful review of the Landlord's documentary evidence, I find that the Landlord has not provided sufficient documentary evidence, to satisfy me, that the Tenant's mobile home is in the condition that he claims. Overall, I find there is an absence of physical evidence that would outweigh the contradictory verbal testimony of the parties, in this case.

Consequently, I find that the Landlord has not proven cause sufficient to terminate the tenancy for any of the reasons given on the Notice he issued. Therefore, I grant the Tenant's application

to cancel the Notice issued on March 29, 2019, and I find the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in his application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for his application. The Tenant is allowed to take a one-time deduction of \$100.00, from his next month's rent.

Conclusion

The Tenant's application to cancel the Notice issued March 29, 2019, is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenant permission to take a one-time deduction of \$100.00, from his next month's rent.

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: May 23, 2019

Residential Tenancy Branch