



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, OPN, FF

This hearing was convened in response to applications by the landlords and the tenant filed under the *Manufacture Home Park Tenancy Act* (the “Act”).

The landlords’ application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The tenant’s application is seeking orders as follows:

1. To cancel a One Month Notice to End Tenancy for Cause (the “Notice”), issued on June 16, 2021;
2. To suspend or set conditions on the landlord’s right to enter the site; and
3. To have the landlord comply with the Act.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. The parties confirmed they were not making a prohibited recording of this hearing.

The tenant confirmed they received the landlord’s evidence. The landlords stated that they received a large volume of evidence from the tenant on October 12, 2021 as it was left on their doorstep. The landlords stated that the evidence appears to not be relevant and they did not have sufficient time to read it. The landlords object to the tenant’s evidence being considered. The tenant stated they left their evidence at the landlord’s residence on October 8, 2021.

Even if I accept the tenant's evidence that they left their evidence at the landlord's residence on October 8, 2021, it was not deemed served until three days later, which was October 11, 2021. This does not comply with the Residential Tenancy Branch Rules of Procedures. I also note most of this evidence was available to the tenant to submit at the time they filed their application. I find this was an unreasonable delay. Therefore, I find all evidence filed with the Residential Tenancy Branch on October 7, 2021, is excluded from this hearing.

I also have read the details of the dispute relating to the tenant request to suspend or set condition on the landlord's right to enter the site, which reads as follows.

"The Landlords are conducting monthly inspections since November 2020 on the basis of a one-time misdemeanor in October and it has not happened since. Also, they are continuing this action as a fundamental of continuous harassment".

[Reproduced as written.]

In this case, I decline to hear this matter because the tenant has not identified any breach of the Act. The landlords are entitled under section 23 of the Act to conduct general monthly inspections of the site. This does not constitute harassment. The landlords are to ensure when they give notice of inspection that the tenant has at least 24 hours notice, state the purpose, the date and time of entry.

This does not limit the landlords right to give other notices to enter the site for other purposes such as to make repairs, or to ensure compliance with previous warning letters or Orders given by the Director. The landlord does not need to give notice when simply at the site to reasonably speak to the tenant or serve documents, if related to the tenancy.

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 landlords have the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Are the landlords entitled to an order of possession?

Background and Evidence

The tenancy began on December 1, 2018.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental site on August 1, 2021. The reason stated in the Notice was that the tenant has not done required repairs of damage to the site and breach of a material term of a tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlords testified that the tenant has planted trees that are too close to the septic field and need to be removed and there are planter boxes on top of the septic field. The landlord stated that they gave the tenant written notice on January 29, 2021 to have the trees and boxes removed by May 1, 2021. The landlords stated that the tree roots could cause considerable damage if they get into the septic field. The landlords stated that the tenant has not removed the trees or boxes after written notice to do so.

The tenant testified that they had the landlords permission to plant trees and the landlord even helped to dig some of the holes. The tenant stated that the trees roots would not get into the septic field to cause damage, as their roots would not expand more than three feet. The tenant stated that some are hazelnut trees, which are small shrubs, cedar trees and fruit trees. The tenant stated they did not remove the trees as they give them some privacy.

The landlords responded that they did help dig some of the holes for the trees in 2020. The landlords stated they are not asking for all the trees to be removed only the ones that they have identified as they are too close to the septic field. The landlords stated they did not realize it was an issue at the time.

Analysis

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

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlords have not provided sufficient evidence to show the reasons stated in the Notice for the following reasons.

In this case, there is no term in the tenancy agreement relating to planting of trees. The tenant had the landlords' permission to plant trees and the landlord even help to dig some of the holes. Therefore, I find I cannot find a breach of a material term of the tenancy agreement.

Further, there is no evidence before me that the trees have caused damage to the septic field at this time, the landlords have not provided any evidence from a qualified person. While I accept that some of the trees might be too close to the septic field based on an internet document the landlord has provided, and this may cause future damage, if left to grow; however, this appears to be a preventative measure, rather than actual damage.

Furthermore, I find it unreasonable that the landlords would not have been aware at the time the trees were planted, that this could lead to future problems with their own septic field. While I accept this may have been a mistake on the landlords to give their consent, I find it would be unreasonable to end the tenancy for this issue.

Based on the above, I grant the tenant's application and cancel the Notice. The tenancy will continue until legally ended. The landlords' application for an order of possession is dismissed.

Although I have made the above findings, I find that this does not resolve the issue of what is to happen to the trees or planter boxes that could cause damage to the septic field that are the subject of this dispute. I find it would be unreasonable for me not to address this issue further in this Decision as this dispute must be resolved in one way or another.

Therefore, I find it appropriate to make the following Orders pursuant to section 55 of the Act.

1. I Order the tenant to remove any trees identified that they want to keep, at their cost no later than November 30, 2021. The tenant can, if they choose, place them in pots or resale them. The tenant is to ensure no damage is caused to the septic field.

2. I Order the tenant to remove all planter boxes or containers that are on the septic field no later than November 30, 2021.
3. I Order the landlord that should any trees remain after November 30, 2021, they can have the trees removed at their cost or risk the future damage to their septic system. This is because when permission is granted to plant trees they become part of the land. It would not be a reasonable expectation that trees would have to be removed at the end of a tenancy, as they are not intended to be a temporary fixture, such as a garden.

Conclusion

The landlord's application is dismissed. The tenant's application to cancel the Notice, is granted. The parties are to comply with my above Orders.

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

Dated: October 28, 2021

Residential Tenancy Branch