

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPB, OPC

Introduction

I have been delegated authority under section 9.1 of the *Manufactured Home Park Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I have thoroughly reviewed the evidence provided by both parties prior to the Hearing. Both parties were represented at the hearing and were provided the opportunity to be heard and respond to the other party’s submissions. The parties gave affirmed testimony at the Hearing and the Hearing proceeded on its merits.

Issue(s) to be Decided

This is the Landlords’ application for an Order of Possession.

Background and Evidence

There was no issue with respect to service upon the Tenant. The Tenant admitted service of the Notice to End Tenancy and the Notice of Hearing documents.

The Landlords gave the following evidence and oral testimony:

- This is a long term tenancy, which started approximately 29 to 30 years ago. There is no written tenancy agreement.
- The Tenant has an on-going history of harassing behaviour towards other tenants and the Landlords.
- Between January 29, 2009 and February 22, 2009, the Tenant left 13 messages on the Landlords’ answering machine, including messages that were disturbing and harassing in nature.
- The Tenant has recently been harassing other tenants with threatening letters, hand gestures and telephone calls.

- The Tenant damaged the Landlords' property, by breaking the thermostat in the common laundry room. It cost the Landlords \$198.00 to repair the broken thermostat.
- The Landlords have an obligation to the other tenants in the manufactured home park, to provide them with quiet enjoyment.
- The Landlords asked for an Order of Possession.

The Tenant gave the following evidence and oral testimony:

- The Tenant was ill in late fall, 2008 and early 2009, because she was taking the wrong medication for a medical problem. During that period of time, she had no clear understanding of what she was doing and should not be held responsible for her actions.
- The Tenant has been on different medication since February 19, 2009, and has shown a marked improvement. The rambling, sarcastic telephone messages to the Landlord ceased on February 22, after she started taking appropriate medication.
- It would be detrimental to the Tenant's health for her to be evicted from her home.
- The Tenant disputed that there has been an on-going history of harassing behaviour towards the Landlords or other tenants.
- The Tenant asked that the Notice to End Tenancy for Cause be cancelled and that she be allowed to remain in her home of 30 years.

Analysis

I have carefully considered the oral testimony and written evidence provided by both parties.

Section 59 of the Act states:

Director's orders: changing time limits

59 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 52 (3) *[starting proceedings]* or 74 (4) *[decision on application for review]*.

(2) Despite subsection (1), the director may extend the time limit established by section 39 (4) (a) *[landlord's notice: non-payment of rent]* for a tenant to pay overdue rent only in one of the following circumstances:

- (a) the extension is agreed to by the landlord;
- (b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

The evidence at the Hearing established that the One Month Notice to End Tenancy was deemed served upon the Tenant on February 21, 2008 (three days after leaving the Notice at the Tenant's residence). Therefore the effective date of the end of tenancy is March 31, 2009. The Tenant did not apply before March 31, 2009, to extend the time limit to make her application to dispute the Notice to End Tenancy. Therefore, pursuant to Section 49(3) of the Act, I am statute barred from extending the time limit to allow the Tenant to make her application.

Sections 40(4) and 40(5) of the Act states:

Landlord's notice: cause

40

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the manufactured home site by that date.

The Tenant was deemed to have received the notice on February 21, 2009. The Tenant did not make an application to cancel the Notice to End Tenancy within 10 days of receipt of the notice, and in fact, has never filed an application to set the notice aside. This Hearing was scheduled in respect to the Landlord's application for an Order of Possession.

Pursuant to Section 40(5), the Tenant is conclusively presumed to have accepted that the tenancy ended on March 31, 2009. The Landlord is entitled to an Order of Possession and I make that order.

Section 48(3) of the Act states:

Order of possession for the landlord

48

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a manufactured home site, and the order takes effect on the date specified in the order.

I hereby grant the order of possession in favour of the Landlord effective July 31, 2009.

Conclusion

Under Section 48 of the Act, the Landlord is entitled to an Order of Possession and I hereby issue the order effective July 31, 2009. This order must be served on the

Tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

May 15, 2009
