

DECISION

Dispute Codes OPC, CNC, MT, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord applied for an order of possession and a monetary order. The tenant applied for more time to apply to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and a witness and the tenant and his agent. The landlord's witness provided testimony and each party was provided an opportunity to question the witness, neither party questioned the witness.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause and to a monetary order to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 40, 48, 60 and 65 of the *Manufactured Home Park Tenancy Act (Act)*.

In addition it must be decided if the tenant is entitled to more time to apply to cancel a notice to end tenancy and to cancel a notice to end tenancy for cause pursuant to sections 40 and 59 of the *Act*.

Background and Evidence

The landlord provided testimony that a 1 Month Notice to End Tenancy for Cause was served on the tenant at the address he resides on February 23, 2010 by placing it on his door.

The landlord indicated that they pressed the tenant's security door button but was not let in and so he and his witness waited for some time until another person went into the building and they followed the other person in. The witness confirmed this series of events.

The tenant contended that the service was performed at an incorrect address as the landlord had put an incorrect address on the 1 Month Notice. The tenant provided documentation confirming the landlord had the correct address for the tenant as he had recently received a notice of rent increase.

The tenant testified that the landlord would not be able to gain entry as described because he lives in an "intentional community" and there are strict rules around letting guests into the building. The tenant contends that no one would have let the landlord and witness in without a resident escort.

The tenant further testified that he did not receive the notice until he received the landlord's evidence for this hearing on March 15, 2010 but he later stated that he had not received it until March 28, 2010 and then finally he stated he had not received it until April 3, 2010.

The tenant testified that he did not know there was a time frame to submit his Application for Dispute Resolution to cancel the notice to end tenancy and provided no explanation as to why he had not submitted his Application prior to April 20, 2010.

Analysis

While the tenant argues that the landlord served the 1 Month Notice to End Tenancy for Cause dated February 23, 2010 the tenant also confirms the landlord had the tenant's correct address prior to the issuance of the notice.

As a result and combined with the landlord's corroborated testimony, I am satisfied the tenant was served with the 1 Month Notice in accordance with Section 81 (g) of the *Act*.

Even if the tenant had not received the 1 Month Notice to End the Tenancy until as late as April 3, 2010 the tenant was still required, if he wanted to dispute the notice, to submit his Application for Dispute Resolution within 10 days after receiving the Notice, to be in compliance with Section 40 (4). The tenant submitted his application 17 days after this date.

And as the tenant failed to provide any indication of extenuating circumstances that might warrant an extension for submission of an Application under Section 59 of the *Act*, I dismiss the tenant's application for more time to apply to cancel the notice.

As the tenant failed to submit an Application for Dispute Resolution within the 10 day required under Section 40(4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, pursuant to Section 40 (5).

Conclusion

I find that the landlord is entitled to an Order of Possession and in light of the current occupancy of the manufactured home by a third party and the potential that the home may need to be moved, the order is effective **May 31, 2010 at 1:00 p.m. after service on the tenants**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$50.00** comprised of the fee paid by the landlord for this application.

This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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

Dated: May 10, 2010.

Dispute Resolution Officer