

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 40; and
- authorization to recover the filing fee for their application from the landlord pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. On March 7, 2011, the landlord handed a 1 Month Notice to End Tenancy for Cause (the Notice) for repeated late payment of rent to the tenants seeking an end to their tenancy on May 1, 2011. The female tenant (the tenant) confirmed having received this Notice and entered it into the tenants' written evidence. The parties agreed that the tenants handed a copy of the tenants' dispute resolution hearing package to the landlord on March 17, 2011. I am satisfied that the parties served these documents to one another in accordance with the *Act*.

The male landlord (the landlord) testified that he received the tenants' evidence package well in advance of this hearing. The landlord said that he sent a 26-page evidence package to the local Government Agent's Office shortly after he handed the Notice to the tenants on March 7. He testified that he expected by doing so that his evidence would be forwarded to the Residential Tenancy Branch (RTB) for consideration during this hearing. Since the landlord did not apply for dispute resolution and the tenants had not at that time yet commenced their application for dispute resolution, it was unclear how or why the landlord believed that his evidence would be forwarded to the RTB for consideration at this hearing. As the landlord did not provide this written evidence to the RTB with respect to any application for dispute resolution then before the RTB and I did not have these documents before me, I did not consider the landlord's evidence. Under these circumstances, I was unwilling to the landlord's request at this hearing to adjourn to enable him to send this written evidence to the RTB for consideration with respect to the tenants' application. However, I did allow the landlord to enter oral testimony regarding that evidence at the hearing.

At the hearing, the landlord made an oral request for an Order of Possession if the tenants' application to cancel the Notice were dismissed.

Issues(s) to be Decided

Should the landlord's 1 Month Notice to End Tenancy for Cause be cancelled? Should the landlord be issued an Order of Possession? Are the tenants entitled to recover their filing fee for their application from the landlord?

Background and Evidence

The parties agreed that the female tenant commenced renting a manufactured home park pad in this manufactured home park in 1993. Her husband commenced living on this site with the female tenant a number of years later.

Monthly rent for this pad rental is set at \$299.00, payable in advance on the first of each month. The parties agreed that the landlord has demonstrated flexibility with the tenants in this park (including these tenants) by allowing tenants a grace period until the 5th of each month before the landlord commences taking action regarding unpaid rent.

The male landlord entered undisputed oral testimony that the tenants paid their February 2010 rent with an NSF cheque on February 5, 2010. He said that they paid their rent for that month on February 10, 2010. He also testified that the tenants' December 2010 rent was not paid until December 9, 2010 and their March 2011 rent was not paid until March 8, 2011. The male landlord and his wife who often receives the tenants' rent in an external mailbox testified that the tenants have been frequently late in their rent payments during the five years that they have been the landlord's on-site park managers. They testified that the tenants seldom pay their rent on the first of the month and said that a number of 10 Day Notices to End Tenancy for Unpaid Rent have been issued to the tenants over the years. They also testified that they have spoken with the tenants about the landlord's unwillingness to continue this tenancy if the tenants fail to pay their rent on time. The male landlord read into evidence the wording of a March 9, 2007 letter advising the tenants that there would be no tolerance for future late payments of their rent. Ms. AS, the representative of the landlord's company who participated in the hearing, testified that there have been problems with late payment of rent by these tenants for many years.

The tenant confirmed that the tenants have been late on the above noted occasions in paying their rent. She said that "We have been late on payments sometimes." She said that her husband who is no longer living with her has been reluctant to drop cheques in the park manager's outside mailbox and has held onto these cheques sometimes until he could deliver the cheque directly to someone. She had no response to the landlord's question as to why rent cheques have not been paid prior to the 5th of each month when the 5th falls on a weekend.

At the hearing, the landlord and the landlord's representative at this hearing discussed the timing of the Order of Possession they were seeking. They asked for an Order of Possession effective on the last day May 2011 to allow this long-term tenant more time to arrange other living arrangements for her and her daughter.

Analysis

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy when the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions...

There was undisputed evidence that the pad rental agreement requires the tenant to pay all of the rent in advance by the first of each month. Despite the additional grace period provided by the landlord and repeated warnings and reminders, the tenants have paid their monthly rent later than the 5th of each month on a number of occasions, including three times within the past 14 months. I am satisfied on the basis of the evidence presented by the parties, including some of the tenant's own written evidence, that there has been a pattern of late payment of rent during this tenancy. I dismiss the tenants' application to cancel the landlord's 1 Month Notice to End Tenancy for Cause on the basis of the tenants' repeated late payment of rent.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

In accordance with section 55(1) of the *Act*, I provide the landlord with a formal copy of an Order of Possession effective at one o'clock in the afternoon on May 31, 2011.

Conclusion

I dismiss the tenants' application to cancel the landlord's Notice. I issue the landlord an Order of Possession to take effect on May 31, 2011. Should the tenant(s) fail to comply

with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Since the tenants' application has been unsuccessful, I make no Order regarding the recovery of their 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*.