



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNC

Preliminary Issues

At the outset of the teleconference hearing the Tenant's assistant advised that the Tenant was of First Nation's decent, that he is approximately sixty years of age, the Tenant does not understand this process very well, and that the Tenant will be speaking on his own behalf. If The Tenant does not understand something he will ask his assistant for further clarification.

Upon review of the Tenant's application for dispute resolution, the Landlord confirmed his name had been spelled incorrectly and that his daughter's name was very similar and is sometimes confused as his name. The Landlord requested that the spelling of his name be corrected.

Based on the aforementioned I approve the Landlord's request and I amend the application to correct the spelling of the Landlord's and his Agent's names, Pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for more time to make his application to cancel a notice to end tenancy, and to cancel a notice to end tenancy issued for cause.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant met the burden of proof to extend the time frame in which to make his application for dispute resolution?
2. If so, have the Landlords issued a valid 1 Month Notice to End Tenancy accordance with the *Manufactured Home Park Tenancy Act* (the Act)?

3. If so, have the Landlords met the burden of proof to end this tenancy in accordance with the Act?

Background and Evidence

The Tenant affirmed that he had inherited this manufactured home in September 1997 and took over the tenancy for pad rental at that time. His current pad rental is payable on the first of each month in the amount of approximately \$245.00. His rent is paid directly to the Landlord from Income Assistance.

The Landlord affirmed he has owned this manufactured home park since approximately 2004 and confirmed this park is not on a Reserve and is not on Indian Lands.

The Landlord advised that they have had some ongoing problems with this Tenant and his guests which have escalated over the past three months. The problems involve altercations between the Tenant, his guests and the Tenant's neighbours. They recently found out that the Tenant's plumbing has not been working and that he has been using a bucket and dumping the feces and urine in his yard and near other tenant's manufactured homes.

The Agent affirmed that the incidents have been escalating and on the morning of January 20, 2012 she spent several hours with the Tenant, after serving him with the 1 Month Notice to End Tenancy (the Notice), and even took the Tenant to see his worker at Income Assistance so that they were aware of the Tenant being evicted. The Landlord had done this to assist the Tenant in hopes that he would not be placed out on the street.

The Tenant affirmed that he received the Notice from the Agent on January 20, 2012, and that she drove him to see his worker. When asked why he did not make his application sooner, the Tenant stated that he did not know what was required of him and that he recalls being told to see his advocate about the Notice and that he made an appointment to see them. He acknowledged that he has an alcohol addiction and that he drinks quite a bit which caused him to miss some of his appointments.

The Tenant confirmed that his plumbing has been broken for a long time, "about a year or so", and that he does use a bucket as his toilet. He confirms that he initially dumped the bucket in his yard but recently he started taking it to near the creek and dumping it there. He named two plumbing companies that he has contacted to come and fix his problem but they refuse to work on his unit because they claim his trailer is not safe because it is lifting up on one side.

He says that the Landlord is evicting him because they say he is partying too much and that one of his guests attempted to hit the Landlord. He disagrees with that saying the argument was between his friend, who was sticking up for him, and his neighbour, not the Landlord.

The Landlord claims the Tenant and his friends have torn up the yard, broken the plumbing, and is causing danger to the neighbors children.

The Agent confirmed the Tenants water pipes froze because all of the trailer windows are broken. His trailer is lifting on one side and his plumbing is not working, so he is polluting the land around him when he is dumping this waste everywhere.

The Tenant confirmed all of his windows are broken and he has them covered with blankets. His pipes did freeze but that was last winter and he has since got the water running. He has not been able to find a plumber who will work on his unit. He confirmed they told him he should "blow up his trailer as it is not safe because it is lifting up on one side".

The Agent confirmed they are seeking to obtain an Order of Possession so they can regain possession of the pad and have the Tenant live elsewhere. She confirmed they have already received payment for March 2012 rent from Income Assistance.

Analysis

I have carefully considered the aforementioned, and the documentary evidence which included, among other things, a copy of the 1 Month Notice to End Tenancy issued January 20, 2012.

Section 59 (1) of the *Manufactured Home Park Tenancy Act* provides that 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]*.

Upon hearing the Tenant's reasons for filing his application late, I have given consideration to his illness of alcohol addiction as well as consideration to the Agent's testimony about the Tenant's need for assistance; I accept that in this case there was exceptional circumstance which prevented the Tenant from filing his application for dispute resolution within the required timeframes. Therefore I allow the Tenant more time to make his application for dispute resolution to cancel the 1 Month Notice.

The 1 Month Notice to End Tenancy cited the following reasons for issuance:

The tenant has allowed an unreasonable number of occupants in the unit/site

The 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 has engaged in illegal activity that has, or is likely to:

- damage the landlord's property
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- jeopardize a lawful right or interest of another occupant or the landlord

Tenant has caused extraordinary damage to the unit/site or property/park

I am required to consider the Landlord's evidence not on the basis of whether his testimony "carried the conviction of the truth", but rather to assess his evidence against its consistency with the probabilities that surround the preponderance of the conditions before me.

The parties agree the Tenant's plumbing has not worked for some time and he has been using a bucket as a toilet and has been dumping the raw sewage in the yard. The evidence further supports this raw sewage has been dumped near neighbouring manufactured homes and in or near the creek.

The evidence further supports that plumbers will not conduct work on this manufactured home as they have deemed the unit to be dangerous and unsafe because one side of the unit has lifted up. Also, the pipes have frozen and every window in the unit is broken.

Upon consideration of the aforementioned, I find the current condition of the manufactured home and the Tenant's actions of dumping raw sewage in the yard, nearby neighbours where small children reside, and in the local creek, adversely affects the safety and well being of another occupant or the landlord. Accordingly I find the Landlord has met the burden of proving this tenancy should end pursuant to section 40(1)(d)(ii) of the Act.

As per the aforementioned, this tenancy will be ending and therefore there is no need to analyze the other reasons indicated for issuing the Notice.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice; therefore the Notice is upheld. Accordingly I dismiss the Tenant's application to dispute the Notice.

The Landlord's Agent requested that an Order of Possession be issued as soon as possible.

Section 48 (1) of the Act provides that 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 manufactured home site 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. Therefore, I grant the Landlord an Order of Possession.

I issued the Landlord a verbal Order during the hearing to contact the Ministry of Social Development immediately following this hearing to determine how the Landlord was to return the March 2012 rent.

Conclusion

The Landlord's application will be accompanied by an Order of Possession. This Order is legally binding and must be served upon the Tenant.

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: February 29, 2012.

Residential Tenancy Branch