



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, MNDC, OLC, FF

Introduction

This matter dealt with an application by the Tenant for leave to apply late to cancel a Notice to End Tenancy, to cancel a One Month Notice to End Tenancy for Cause dated March 6, 2012, for compensation for damage or loss under the Act or tenancy agreement, for an Order that the Landlords comply with the Act and to recover the filing fee for this proceeding.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the “hearing package”) by leaving it in the Landlords’ office mail box on March 27, 2012. Section 82(1) of the Act says a Tenant’s application for dispute resolution must be served on a Landlord either in person or by registered mail. I find that the Landlords were not served as required by s. 82(1) of the Act with the Tenant’s hearing packages but for the reasons set out in the Analysis section of this Decision below, I find pursuant to s. 64(3) of the Act, that the Landlords were sufficiently served for the purposes of the Act.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

This tenancy started on October 1, 2009. In previous proceedings between these parties heard on March 26, 2012, the Tenant’s application that the Landlords grant access to the manufactured home park to her guests and to comply with the Act or tenancy agreement was dismissed. In particular, the Tenant claimed that the Landlords advised her that she did not have the Landlords’ permission to have her daughter reside with her for more than three weeks. In a Decision issued on March 27, 2012, the Dispute Resolution Officer noted as follows:

“As the Tenant’s daughter is no longer staying with her, the application to allow access is moot. The Landlord was acting in strict compliance with the tenancy agreement when it asked the tenant’s guest to complete the application for

tenancy. There was no breach of the Act or tenancy agreement. Further, this issue is also moot now that the guest has left the Park."

The Tenant said after she filed her previous application for Dispute Resolution, she was served with the One Month Notice to End Tenancy for Cause dated March 6, 2012 which was left in her mail box. The Tenant said on or about March 9, 2012, she received a telephone call from one of the Landlords who wanted to confirm that her daughter had vacated, and when told that she had, the Landlord advised the Tenant to disregard "what was in her mail box." The Tenant said on March 18, 2012, she also received a letter from the owner of the Park advising her that she was welcome to continue to reside in the Park. Consequently, the Tenant said she did not amend her application to cancel this Notice as she believed it would be dealt with at the hearing on March 26, 2012. On this issue, the Dispute Resolution Officer noted as follows:

"The application for dispute resolution did not include a request for Orders setting aside the Notices to End Tenancy and therefore, in the absence of the landlords, could not be resolved at this hearing. The Tenant was advised that if she wished to continue the tenancy until she can sell her home, she should file a new application for dispute resolution as soon as possible."

Consequently, the Tenant filed a further application on March 26, 2012 to cancel the One Month Notice to End Tenancy for Cause dated March 6, 2012.

Analysis

I find on a balance of probabilities that on or about March 9, 2012, the Landlords verbally withdrew the One Month Notice to End Tenancy for Cause dated March 6, 2012 once they were satisfied that the Tenant's daughter had moved out. I further find that this was reiterated by the owner of the Park on or about March 18, 2012 in a letter to the Tenant. Consequently, I conclude that the Landlords likely did not attend the hearing of this matter because they believed the matter had already been resolved. In any event, given that the mail box in which the hearing package was delivered is the mail box where rent is delivered by tenants of the Manufactured Home Park each month, I find that the Landlords were deemed (under s. 81 of the Act) to have received the hearing package three days after it was deposited or on March 30, 2012.

In the alternative, I find that the Tenant reasonably believed that the Landlords had withdrawn the Notice and that was why she did not apply to cancel the Notice within the ten days granted under s. 40(4) of the Act. Consequently, I find that there are exceptional circumstances to grant the Tenant leave to apply late to cancel the One Month Notice to End Tenancy for Cause dated March 6, 2012. In the absence of any evidence from the Landlords, I find that there is insufficient evidence to support the One Month Notice and it is cancelled.

The Tenant also sought compensation for mailing expenses to serve her documents on the Landlords, however aside from the filing fee, the Act does not allow for the recovery of costs to prepare for and attend dispute resolution proceedings. Consequently, this part of the Tenant's application is dismissed without leave to reapply. The Tenant also sought to recover the filing fee for the previous hearing and for this hearing. However, in the Decision dated March 27, 2012, the Dispute Resolution Officer already awarded the Tenant the \$50.00 filing fee and stated that she could recover the amount by deducting it from her next rent payment.

I find that the Tenant acted reasonably in bringing this application because the Landlords did not specifically advise the Tenant in writing that the One Month Notice had been withdrawn. However, given that the Tenant did not properly serve the Landlords with her application for dispute resolution, I find that it would not be appropriate to award her the filing fee for this proceeding and that part of her application is also dismissed without leave to reapply.

Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated March 6, 2012 is granted. The balance of the Tenant's application is dismissed without leave to reapply.

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: April 17, 2012.

Residential Tenancy Branch