



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Cause; a monetary Order for unpaid rent or utilities; a monetary Order for damage to the unit, site, or property; for an early end to the tenancy; and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

During the hearing the Landlord withdrew the application for a monetary Order for unpaid rent and for damage to the rental unit, as he is not prepared to proceed with those matters today.

The Landlord's Application for Dispute Resolution has been amended to reflect the correct spelling of the female Tenant's name, as it was provided at the hearing.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession for unpaid rent; should the tenancy end early; and is the Landlord entitled to recover the fee for filing this Application for Dispute Resolution?

Preliminary Matter

The Landlord has filed this Application for Dispute Resolution pursuant to the *Residential Tenancy Act (RTA)* and the *Manufactured Home Park Tenancy Act (MHPTA)*.

A tenancy agreement is an agreement between a landlord and a tenant which grants the tenant the right to occupy a rental unit. If a tenant has an interest in the rental unit which is greater than the right to purchase, such as partial ownership arising from a payment made towards purchasing the rental unit, then the parties have an agreement that exceeds a tenancy agreement.

In these circumstances, the Landlord and the Tenant agree that the Tenant is in the process of purchasing the manufactured home from the Landlord and that some money has been paid towards that purchase, although the parties disagree on the amount of money that has been paid. As the parties agree that some money has been paid towards purchasing this rental unit, I find that I do not have jurisdiction under the *RTA*. I therefore decline to consider any issues relating to their agreement to possess/own the manufactured home; for rent owing on that home; or damage to that home.

The Landlord and the Tenant agree that the Tenant has an obligation to pay monthly pad rent of \$215.35 by the first day of each month. On the basis of this agreement, I find that the parties had an agreement that does fall under the *MHPTA*. The parties agree that they have a written tenancy agreement, however neither party has submitted that in evidence and neither party had the agreement available to them at the time of the hearing. I find, therefore, that I do have jurisdiction to determine some of the issues in dispute in regards to the obligation to pay pad rent.

Background and Evidence

The Landlord stated that the manager of the manufactured home park personally served the male Tenant with a One Month Notice to End Tenancy for Cause on December 01, 2012, a copy of which was submitted in evidence. This Notice declared that the Tenant must vacate the rental unit by December 30, 2012.

The male Tenant stated that the park manager did serve him with a One Month Notice to End Tenancy for Cause sometime in December of 2012; that he returned it to the park manager; and that he told the park manager that the Landlord had to serve the Notice to End Tenancy to him.

Analysis

Based on the undisputed evidence, I find that the male Tenant was personally served with a One Month Notice to End Tenancy sometime in December of 2012. There is nothing in the *MHPTA* that permits a tenant to refuse to accept documents that are personally served to them, regardless of who serves those documents.

Section 40(2) of the *MHPTA* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the Tenant did not receive this Notice until sometime in December and the rent is due on the first day of each month, the earliest effective date of this Notice was January 31, 2013.

Section 46 of the *MHPTA* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be

the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was January 31, 2013.

Section 40 of the *MHPTA* stipulates, in part, that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not file an Application for Dispute Resolution to dispute the Notice within ten days of receiving the Notice to End Tenancy. As the Tenant did not file an Application for Dispute Resolution to dispute the Notice, I find that the Tenant accepted that the tenancy has ended, pursuant to section 40(6) of the *MHPTA*. On this basis I find that the Landlord is entitled to an Order of Possession.

As this tenancy is ending pursuant to section 40 of the *MHPTA*, I find there is no reason to also determine whether there is a need to end this tenancy early.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$50.00, in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I therefore grant the Landlord a monetary Order for the amount of \$50.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: February 12, 2013

Residential Tenancy Branch

