



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 480094 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was scheduled to deal with a tenant's Application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

I have amended the name of the landlord to correspond to the landlord's name as identified on the tenancy agreement and the 10 Day Notice.

During the hearing the parties reached a mutual agreement that I have recorded by way of this decision and the Order that accompanies it.

Issue(s) to be Decided

What are the terms of the mutual agreement?

Background and Evidence

The parties entered into a tenancy agreement starting October 2009. The tenants are required to pay rent for the manufactured home site in the amount of \$273.48 on the 1st day of every month. In addition, the tenants are required to pay monthly payments of \$454.98 for a loan on the manufactured home. Although the tenancy agreement and the loan agreement are two separate agreements involving two different corporations, the same person represents both corporations. The two corporations and the individual representing the corporations have collectively been referred to as "RR" in this decision.

On May 28, 2013 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) indicating the tenants owed rent of \$2,185.92 as of May 1, 2013 and I determined that this 10 Day Notice reflects rent owed as opposed to

delinquent loan payments. It was undisputed that the tenants have not paid this amount since receiving the Notice. Rather, the tenant filed to cancel the Notice on the basis "additional time is required to reconcile outstanding monies".

I also heard that another 10 Day Notice was served upon the tenants on May 28, 2013 and that the amount appearing on this second Notice reflects the sum of the delinquent loan payments. Use of a 10 Day Notice produced by the Residential Tenancy Branch is to notify the tenant of their failure to pay rent pursuant to their tenancy agreement under either the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*. As such, a person may not use a 10 Day Notice to enforce delinquent loan payments and the only 10 Day Notice discussed further was the Notice issued for outstanding pad rent.

I was provided copies of two ledgers RR maintains for the tenants' accounts: one for pad rent and the other for loan payments. The ledgers show that the tenants fell into arrears with respect to both the rent payments and loan payments starting in January 2012. Both ledgers include credits for amounts "worked off". Both parties agreed that the tenant has performed work for RR and that the tenant was compensated by way of credits being applied to the arrears of both accounts.

The tenant did not dispute that they are in arrears; however, the tenant was of the belief he should have been credited more than he was for work done for RR. RR was of the position that he has credited the tenant as per their labour agreement. RR was willing to show the tenant the paperwork with respect to the amounts credited for work performed, if necessary, but was unaware that this was the issue under dispute in reading the details of dispute provided by the tenant on his Application for Dispute Resolution. In any event, RR submitted that any adjustment for labour would not come close to satisfying the thousands of dollars in arrears.

As I do not have jurisdiction to resolve labour disputes I do not have the authority to increase the credits already applied to the tenants' ledger for labour performed by the tenant. Rather, if the labour credits were removed from the ledgers and the labour contract enforced separately the balance of the rental arrears would actually be greater than what it currently reads. Therefore, I was satisfied the 10 Day Notice issued for rent owed in the amount of \$2,185.92 is not overstated and, as the parties were informed during the hearing, I find the 10 Day Notice is valid.

After providing both parties with my findings, as outlined above, the parties were both agreeable to entering into a mutual agreement with a view to satisfying the arrears and

continuing with the tenancy. I have recorded the agreement the parties reached during the hearing as follows:

1. The tenancy shall continue at this time;
2. The tenants shall pay the landlord/RR the sum of \$728.46 on or before July 1, 2013;
3. The tenants shall pay the landlord/RR the sum of \$1,456.92 starting August 1, 2013 and continue to pay this amount on the 1st day of every month until such time the arrears are satisfied.
4. In the event the tenants fail to fulfill term no. 2 or 3 the tenancy will come to an end and the landlord may serve and enforce the Order of Possession that is provided to the landlord with this decision.

Analysis

Pursuant to section 56 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record a settlement agreement in the form of a decision or order.

I have recorded and accepted the mutual agreement reached by the parties during this hearing and I make the terms an Order to be binding upon both parties.

In recognition of the mutual agreement, I have provided the landlord with a conditional Order of Possession with this decision. As such, this Order of Possession may only be served and enforced if the tenants fail to fulfill the term no. 2 or 3 of the mutual agreement as recorded in this decision.

Conclusion

This dispute has been resolved by way of a mutual agreement that I have recorded in this decision. The landlord has been provided a conditional Order of Possession that may only be served and enforced if the tenants fail to fulfill the terms of the mutual agreement, as recorded in this decision.

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: June 20, 2013

Residential Tenancy Branch

