



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAMPBELL RIVER FISHING VILLAGE RV PARK
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: CNR OPR, CNLC, PSF, AAT, RR

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent dated June 10, 2013.

The hearing was also convened to deal with a cross application by the tenant to dispute the 10-Day Notice to End Tenancy for Unpaid Rent and a Notice of the Landlord's Intention to Convert the Manufactured Home Park to Another Use. The tenant was also requesting orders to force the landlord to provide services and facilities required by law, to allow the tenant access to and from their unit and an order to allow the tenant to reduce rent for repairs, services and facilities agreed upon but not provided.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matter

The tenant's application included a request for an order to cancel the *Notice of Landlord's Intention to Convert the Manufactured Home Park to Another Use*. However, because there was no evidence or any indication that such a Notice was ever issued or served on the tenant by the landlord, I find that this matter need not be determined.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession based on the Ten-Day Notice to End Tenancy issued under section 39?

- Should the 10-Day Notice to End Tenancy for Unpaid Rent be cancelled?
- Should orders be issued to force the landlord to comply with the Act to provide services and facilities required by law, to allow the tenant access to and from the unit and to reduce the rent?

Background and Evidence

The tenancy began approximately 2 years ago and the rent is \$422.25 per month. The landlord testified that, after the tenant failed to pay rent due on June 1, 2013, a Ten Day Notice to End Tenancy for Unpaid Rent was served on the tenant in person on June 10, 2013.

The landlord submitted into evidence a copy of the Ten-Day Notice to End Tenancy dated June 10, 2013. The landlord testified that, although the tenant promised to pay the rent, and calls from the Ministry confirmed that the payment was imminent, the tenant failed to pay the rental arrears owed within 5 days of receiving the Notice.

According to the landlord, the tenant approached her with the funds seeking to satisfy the arrears *after* the 5-day deadline. This occurred on June 17, 2013. The landlord testified that she told the tenant that, because the payment of rental arrears would be received beyond June 15, 2013, it was too late to cancel the 10-Day Notice to End Tenancy for Unpaid Rent, and the landlord declined to accept the payment.

The landlord testified that the tenant had also failed to file to dispute the 10-Day Notice to End Tenancy for Unpaid Rent within the 5-day period allowed to do so under the Act, and the landlord therefore made an application for dispute resolution on June 17, 2013 seeking an Order of Possession.

The landlord testified that she is prepared to produce testimony from two witnesses, one of whom was present on June 15, 2013 while the tenant made unsuccessful attempts to obtain the funds to pay his rental arrears and the other who witnessed the service of the documents by the landlord.

The tenant testified that he attempted repeatedly to pay the rent during June 2013, but the landlord refused to accept the funds. The tenant testified that his offer to pay the arrears in full was made prior to the 5-day deadline under the Act and therefore the payment would have functioned to cancel the 10-Day Notice to End Tenancy for Unpaid Rent. On this basis, the tenant is requesting that the 10-Day Notice to End Tenancy for Unpaid Rent be cancelled.

The tenant testified that the landlord refused to issue receipts for cash. The tenant testified that the landlord has been intent on terminating his tenancy.

The two witnesses of the tenant testified that they were told by the tenant that his offers to pay the rent were rejected by the landlord. However, these witnesses stated that they were not actually present during the landlord's and tenant's conversations to personally hear what transpired. The witnesses also expressed their opinions about the landlord's treatment of this tenant and the history of the tenancy.

Analysis

Section 39(1) of the Manufactured Home Park Tenancy Act (the Act) states:

A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 39(4) of the Act states that, **within 5 days after receiving a notice** under this section, the tenant may either:

- (a) **pay the overdue rent**, in which case the notice has no effect, or
- (b) **dispute the notice** by making an application for dispute resolution.

(My emphasis)

I find that the arrears in this case would have to be paid by June 15, 2013 in order to cancel the Notice. I find that the tenant did not pay the arrears within 5 days of receipt of the Notice. I accept the testimony of both parties that the tenant's effort to pay the arrears on June 17, 2013, were rejected by the landlord on the basis that it was too late to cancel the Notice. I find that the tenant did not provide sufficient evidentiary proof that he attempted to give the landlord the rent prior to June 15, 2013, within 5 days of receiving the Notice.

In addition to the above, if the tenant intended to dispute the 10-Day Notice to End Tenancy for Unpaid Rent, the Act states that the tenant can make an application for dispute resolution to dispute a Notice within 5 days .

In this instance, I find that the tenant did make an application to dispute the Notice, but it was not filed until June 27, 2013, which was 17 days after receiving the 10-Day Notice to End Tenancy for Unpaid Rent, well beyond the 5-day deadline.

Section 39(5) of the Act states that, if a tenant, who has received a 10-Day Notice to End Tenancy for Unpaid Rent, does not pay the rent or make an application for dispute resolution within the 5-day deadline, the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the manufactured home site to which the notice relates by the effective date on the Notice.

Based on the testimony of the landlord, I find that the tenant did not submit the rent payment when it was due and was served with a Ten-Day Notice to End Tenancy for Unpaid Rent. I accept that the tenant did not pay the outstanding rent within the 5-day deadline allowed under the Act to cancel the Notice and did not apply to dispute the Notice within the 5-day deadline.

The tenant is therefore conclusively presumed under section 39(5) of the Act to have accepted that the tenancy ended in accordance with the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession

Based on the above facts, I find that the Landlord is entitled, under *section 48* of the Act, to an Order of Possession. I hereby issue an Order of Possession effective two days after service on the Tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

In regard to the tenant's application, I find that the request to cancel the 10-Day Notice to End Tenancy for Unpaid Rent must be dismissed. The rest of the tenant's application, including the tenant's request for orders that the landlord provide facilities and service required by law, allow the tenant access to and from the unit and request for a rent abatement are found to be moot as the tenancy is ending.

Conclusion

The landlord is successful in the application and is granted an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent. The tenant's cross 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: July 16, 2013

Residential Tenancy Branch