



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vista Village Trailer Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act"). The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), and to recover the filing fee.

The tenant, the agent for the landlord, and a witness for the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The parties confirmed that they received evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served under the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Should the 10 Day Notice for Unpaid Rent or Utilities be cancelled?

Background and Evidence

The parties agreed that the tenancy began on February 1, 2009. Current site rent is \$448.00 per month.

The tenant testified that he received the 10 Day Notice in his mailbox on July 8, 2013 which had an effective vacancy date of July 19, 2013 and indicated that \$1,490.00 in

unpaid site rent was due as of July 1, 2013. The tenant disputed the 10 Day Notice on July 16, 2013.

Analysis

Based on the documentary evidence, oral testimony and on the balance of probabilities, I find the following.

The tenant testified under oath that he received the 10 Day Notice on July 8, 2013. The effective vacancy date on the 10 Day Notice is listed as July 19, 2013. The tenant continues to occupy the rental site. The tenant submitted his application for dispute resolution on July 16, 2013. Section 39 of the *Act* states:

39 (1) 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.

(2) A notice under this section must comply with section 45 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(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.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), 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 that date.

[emphasis added]

Based on the above, the last possible day on which the tenant could either pay rent in full or dispute the notice was on July 13, 2013, which would extend to July 15, 2013 as July

13, 2013 was a Saturday. Pursuant to section 25 of the *Interpretation Act*, the tenant had until the next business day, which in the matter before me, was Monday July 15, 2013. The tenant did not apply for dispute resolution until Tuesday, July 16, 2013. The tenant confirmed that rental site arrears were owing to the landlord. Therefore, **I find** the tenant is conclusively presumed under section 39(5) of the *Act* to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, July 19, 2013. Therefore, **I dismiss** the tenant's application as the tenant has been conclusively presumed to have accepted that the tenancy ended on July 19, 2013. The tenant continues to occupy the rental site.

During the hearing, the agent verbally requested an order of possession, however, was willing to delay the effective date of the order of possession until August 31, 2013 at 1:00 p.m. Pursuant to section 48 of the *Act*, **I must** grant the landlord an order of possession. Therefore, **I grant** the landlord an order of possession effective **August 31, 2013 at 1:00 p.m.** The landlord must serve the tenant with the order of possession. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

As the tenant was not successful with his application, **I do not grant** the tenant the recovery of his filing fee.

Conclusion

I dismiss the tenant's application to cancel the 10 Day Notice.

I grant the landlord an order of possession effective **August 31, 2013 at 1:00 p.m.** This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: August 20, 2013

Residential Tenancy Branch