



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- an Order of Possession for cause pursuant to section 48; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that he received the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice of July 22, 2013) sent by the landlord by registered mail on July 22, 2013. The tenant also confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on August 8, 2013. I am satisfied that the landlord served the above documents and his written and photographic evidence packages in accordance with the *Act*.

Preliminary Matters

The tenant said that he believed that the landlord's application for dispute resolution was a duplication of the process followed when the tenant obtained a decision from an Arbitrator on July 10, 2013. On that date, the tenant's application to cancel another 1 Month Notice issued by the landlord on May 13, 2013 was considered and allowed. The landlord did not participate in the July 10, 2013 hearing and the landlord's 1 Month Notice of May 13, 2013 was cancelled by the Arbitrator. As the tenant considered that the grounds cited in the landlord's 1 Month Notice of May 13, 2013, were the same as those cited in the landlord's current 1 Month Notice of July 22, 2013, the tenant believed that there was no need for the tenant to have applied to cancel the landlord's 1 Month Notice of July 22, 2013. For similar reasons and as the tenant believed he already had a final and binding decision from the Arbitrator regarding this tenancy, the tenant did not enter any written evidence for the hearing of the landlord's current hearing. The tenant said that he believed that the material he had submitted for the previous hearing should be sufficient to respond to the landlord's current application.

Although neither party had made any reference to the July 10, 2013 hearing or decision, or the landlord's previous 1 Month Notice, I was able to refer to the July 10, 2013 during this hearing. The landlord's agent (the agent) testified that because the landlord had not been informed of the July 10, 2013 hearing, he did not attend. After contacting the Residential Tenancy Branch (the RTB), the landlord learned that his 1 Month Notice of May 13, 2013 had been cancelled and that he would need to serve the tenant with a new 1 Month Notice if he were interested in obtaining an end to this tenancy for cause. The landlord then proceeded to issue a new 1 Month Notice on July 22, 2013. When the tenant did not apply to cancel the 1 Month Notice of July 22, 2013, the landlord submitted the current application for dispute resolution to obtain an Order of Possession based on the 1 Month Notice of July 22, 2013.

When the tenant learned that the July 10, 2013 hearing addressed only the issue then before the Arbitrator (i.e., the 1 Month Notice of May 13, 2013), the tenant said that he would have applied to cancel the 1 Month Notice of July 22, 2013 had he understood that the previous decision was not binding on the landlord's current attempt to obtain an Order of Possession. He said that he had tried to call in to speak with an RTB representative but was unable to reach anyone. He said that he had much information that he would like me to consider in reply to the landlord's application for an Order of Possession based on the 1 Month Notice of July 22, 2013. He asked for more time to submit written evidence and to have his evidence submitted for the previous hearing considered in the context of the landlord's current application.

I advised the tenant that the 1 Month Notice of July 22, 2013 clearly indicated that the tenant had 10 days to apply to cancel the 1 Month Notice after he was deemed to have received it by registered mail on July 27, 2013. By failing to apply to cancel the 1 Month Notice of July 22, 2013, section 40(5) of the *Act* determines that the tenant has accepted that the tenancy would end on the corrected effective date of the 1 Month Notice, in this case, August 31, 2013. I also noted that the tenant's opportunity to provide written evidence was before the hearing and not once he realized that he had erred in his understanding of the effect of the previous decision on the landlord's current application.

The tenant requested an adjournment of the hearing to enable him time to present written evidence.

Rule 6 of the RTB's Rules of Procedure establishes how late requests for a rescheduling and adjournment of dispute resolution proceedings are handled. In considering this request for an adjournment, I have applied the criteria established in Rule 6.4 of the Rules of Procedure.

At the hearing, I asked the agent whether the landlord was willing to agree to the tenant's late request for an adjournment of this hearing and whether the landlord's rights would be prejudiced by allowing the tenant's request. The agent responded that the landlord has been attempting to obtain an end to this tenancy for months and that the tenant has basically taken over the property under the guise of his rental of a manufactured home pad site. He said that further delays would only extend this process and cause more distress to the landlord and other nearby neighbours who are disturbed by the tenant's lack of care for the rented site.

Although the tenant agreed that the rental in question was a "standard" manufactured home park tenancy agreement for a pad rental, he claimed that the rental included 5 acres of land. He also noted that the original fixed term Manufactured Home Park Tenancy Agreement (the Agreement) had included a provision for the landlord to repurchase the manufactured home from the tenant at full market value at the end of the fixed term. He testified that the landlord had struck out this portion of the Addendum attached to the Agreement, without the tenant's consent.

I accepted the agent's claim that the landlord's rights would potentially be affected by the delay caused by the tenant's requested adjournment of this proceeding. At the hearing, I decided that the tenant had not met the criteria established for granting an adjournment and proceeded with this hearing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause? Has the landlord reinstated this tenancy by accepting rent from the tenant after the tenancy was scheduled to end in accordance with the 1 Month Notice of July 22, 2013? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy for a pad rental of a manufactured home site commenced on August 1, 2009, by way of the three year fixed term Agreement between the parties. According to the terms of the Agreement, most of which was entered into written evidence by the landlord (excluding page 1), the tenant paid the landlord \$500.00 by the first of each month. When the Agreement ended on July 31, 2012, the tenancy continued as a periodic tenancy.

The parties agreed that they both signed a 4-point Addendum to the Agreement. They disagreed as to whether both parties had agreed to eliminate the fourth provision of that Addendum, involving an agreement whereby the landlord would purchase the manufactured home from the tenant at the end of the tenancy.

The landlord entered into written evidence a copy of his 1 Month Notice of July 22, 2013. In that Notice, requiring the tenant to end this tenancy by August 22, 2013, the landlord cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:...

- *put the landlord's property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:...

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;...*

Tenant has not done required repairs of damage to the unit/site.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so...

Analysis

Section 40 of the Act reads in part as follows:

40 (4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

(5) *If a tenant who has received a notice under this section does not 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 by that date...

Based on the evidence, I find that the tenant has not made application pursuant to section 40(4) of the Act within ten days of being deemed to have received the 1 Month Notice of July 22, 2013. In accordance with section 40(5) of the Act, the tenant's failure to take this action within ten days led to the end of his tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by August 31, 2013.

However, both parties agreed that the tenant paid his monthly rent of \$500.00 to the landlord for September 2013 rent. The agent confirmed that the landlord did not issue a receipt for that monthly rent payment. The parties agreed that this payment was

accepted by the landlord for rent and not for “use and occupancy only.” After checking with the landlord, the agent also confirmed that the landlord has cashed the tenant’s September 2013 monthly rent cheque.

As noted at the hearing, I find that the landlord’s acceptance of the tenant’s rent cheque for September 2013 after this tenancy was to end effectively reinstated this tenancy. As the landlord’s actions have reinstated this tenancy, I find that the landlord’s 1 Month Notice of July 22, 2013 is of no force or effect.

As noted at the hearing, this decision does not prevent the landlord from issuing a subsequent 1 Month Notice to the tenant if the situation that gave rise to the 1 Month Notice of July 22, 2013 persists. Should the tenant disagree with any subsequent notice to end tenancy issued by the landlord, it is incumbent upon the tenant to apply to cancel that notice within the time frames set out on that notice and in the *Act*.

Conclusion

I dismiss the landlord’s application for an Order of Possession for Cause based on the landlord’s 1 Month Notice of July 22, 2013, without leave to reapply. I do so as I find that the landlord has reinstated this tenancy subsequent to the date when the tenancy was to end in accordance with the 1 Month Notice of July 22, 2013.

As the landlord has not been successful in this application, the landlord bears responsibility for his own filing fee for this application.

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: September 16, 2013

Residential Tenancy Branch