



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Willow Beach Developments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT, O

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 39; and
2. An Order allowing more time to make the application – Section 59.

Preliminary Matter

This matter was initially scheduled to be heard on May 29, 2014. Both Parties attended the hearing. The Landlord stated that while they had received the Tenant’s Application by registered mail the Notice of Hearing was only received on May 28, 2014. The Landlord stated that they immediately faxed 49 pages of evidence to the RTB but did not provide the same evidence to the Tenant. The Landlord sought an adjournment to provide this evidence to the Tenant. The Tenant consented. The Tenant also indicated that he was currently working out of country on a temporary basis but could be served the evidence package to the dispute address. The Landlord agreed to also send a copy of the evidence by email to the Tenant.

Upon reconvening on this date the Landlord did not appear. The Tenant was given full opportunity to be heard, to present evidence and to make submissions. The Tenant states that he continues to be out of country, that no copy of the evidence package was received by email from the Landlord and that a hard copy package was received by the Tenant’s local friend.

Issue(s) to be Decided

Is the Tenant entitled to more time to make the application?

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy started several years ago. Pad rent of \$250.00 is payable monthly. The Tenant was out of the country when informed on March 25, 2014 that the Landlord had given the Tenant a 10 day notice to end tenancy for unpaid rent of \$2,250.00. The Tenant does not know when or how the Notice was served to his residence. The Landlord knew that the Tenant was out of country at the time. An email from the Landlord to the Tenant dated April 11, 2014 indicates that the Landlord served the Notice to the Tenant but there is no indication of when this occurred. The Tenant does not have a copy of the Notice present at the hearing and does not recall its details other than the amount set out as unpaid. It is noted that no copy of the Notice was provided in the Landlord's evidence package. The Tenant states that he does not owe the amount set out on the Notice and his submissions indicate that he paid the amount he agreed was owing to the Landlord before April 30, 2014.

Analysis

Section 59 of the Act provides that a time limit may be extended in exceptional circumstances. Given the lack of evidence from the Landlord in relation to service of the Notice and considering the Tenant's evidence that the Landlord knew the Tenant was out of the country when the Landlord informed the Tenant of the Notice, I find that exceptional circumstances allow an extension of the time for making an application to dispute the Notice.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason indicated by the Notice. Based on the undisputed evidence of the Tenant that the Tenant does not owe the amount indicated on the Notice, I find on a balance of

probabilities that the Notice does not have a valid basis and that the Tenant is entitled to a cancellation of the Notice.

Conclusion

The Notice is cancelled and the tenancy continues.

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 25, 2014

Residential Tenancy Branch

