



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 MT, CNR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; her advocate; and two agents for the landlord.

The tenant confirmed that she received the landlord's 10 Day Notice to End Tenancy on July 16, 2014 and her Application for Dispute Resolution was filed with the Residential Tenancy Branch on July 18, 2014. As such, I find the tenant filed her Application for Dispute Resolution within 2 days of receiving it and therefore does not require additional time to submit her Application. I amend the tenant's Application to exclude the matter of more time to cancel a notice to end tenancy.

During the hearing, the landlord verbally requested an order of possession should the tenant be unsuccessful in her Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 39 of the *Manufactured Home Park Tenancy Act (Act)*.

If the tenant is unsuccessful in her Application seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent it must be decided if the landlord is entitled to an order of possession, pursuant to Section 48 of the *Act*.

Background and Evidence

The tenant submits the tenancy began in 1999 as a month to month tenancy for a current monthly rent of \$306.00 due on the 1st of each month. While the landlord could not confirm the start date of the tenancy she did not dispute any of the other details of the tenancy.

The landlord submits that the tenant failed to pay rent for the month of July by July 1, 2014 and she issued the tenant a 10 Day Notice to End Tenancy on July 9, 2014 with an effective vacancy date of July 23, 2014 for unpaid rent in the amount of \$301.00. The landlord provided a copy of this Notice that she served to the tenant by registered mail on July 9, 2014.

The tenant submits that she purchased a money order from her bank and put it in the mail on June 20, 2014. The tenant confirmed that she sent the money order by registered mail. A review of the tracking information on Canada Post's website shows the registered mail is still in transit.

The landlord provided into evidence a copy of a letter dated July 21, 2014 from the landlord to the tenant advising the tenant she had received the tenant's payment of rent for the month of July 2014. The landlord submitted a letter dated September 9, 2014 confirming that the money order she received on July 21, 2014 was actually the tenant's payment for August. The letter goes on to explain the landlord has received payments for the months of August and September but that she has not yet received July's payment.

The tenant acknowledges that the money order she sent on June 20, 2014 has not yet arrived at the landlord's office and she states her bank is prepared to reissue a new money order however she has asked the landlord for a letter for the bank stating she has not yet received the payment.

The landlord submits that the Park Rules require the tenant provide post dated cheques to the landlord for rent payments but that the tenant refuses to provide them and mails the money orders monthly. The landlord requires the cheques be mailed to the landlord's address in a completely different part of the province and that her site manager is not allowed to collect rental payments.

Analysis

Section 39 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant 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) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

Section 20 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

From the evidence before me I accept the tenant took reasonable steps to ensure payment of rent was received by the landlord prior to the day it was due in accordance with the tenancy agreement. I find that the delay in receipt is attributed solely to Canada Post, as the mail is still showing in transit on the Canada Post website.

I acknowledge that at one point the landlord thought she had received the tenant's rent payment and issued a receipt for it. I also accept, however, that the landlord later determined that what she had received was actually the tenant's payment for August.

I find that as a result, the tenant was informed at one point, by way of a receipt and letter from the landlord that she had received the payment. I also find that as a further result there has been confusion over whether or not the payment had been received.

I find that once the tenant did realize it was outstanding she contacted her bank to obtain a replacement and that she had informed the landlord that she needed a letter from the landlord explaining that she had not yet received it for the bank to issue a replacement money order.

I accept the landlord thought that the letters she had already provided the tenant would have been sufficient but it appears there was a breakdown in communication between the two on this issue.

I find the tenant failed to pay rent pursuant to Section 20 for the month of July 2014. However, I also find that since the landlord will not allow the onsite manager to collect rent payments the tenant had no alternative but to use Canada Post and that it was the fault of Canada Post that the payment for July was not received by the landlord by July 1, 2014.

I also find that the tenant failed to take steps to ensure the payment was received by the landlord before this hearing (2 months after the 10 Day Notice to End Tenancy was issued). However, I also find that the landlord, in part, did contribute to the confusion as to why it has not been paid in this time period by first indicating she had received the payment and then not providing the tenant with a letter as requested by the tenant's bank.

During the hearing I ordered the landlord to provide the tenant with a letter addressed to the bank specifically identifying that she had not yet received the monetary order. I then ordered the tenant that she must take the letter and tracking information from the Canada Post to show the letter is still in transit to her bank.

I ordered the tenant to obtain a replacement money order and provide it to the landlord for July 2014 rent; or if the bank would not provide her with a replacement that she must provide her own payment to the landlord. In either event the payment must be made as soon as possible.

Based on the above and due to the confusion of both parties over the events I also order that should the payment of rent not have been paid to the landlord within 5 days of receipt of this decision, the tenant must vacate the rental site pursuant to the 10 Day Notice to End Tenancy for Unpaid Rent issued on July 9, 2014.

However, I find that should the tenant make the payment within 5 days of receiving this decision that the 10 Day Notice to End Tenancy for Unpaid Rent issued on July 9, 2014 is void and is of no effect, pursuant to Section 55 of the *Act*.

Conclusion

Based on the above, I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order is only enforceable if the tenant has failed to pay the July 2014 rent within 5 days of receipt of this decision. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 24, 2014

Residential Tenancy Branch

