



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MT, CNC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied under *the Manufactured Home Park Tenancy Act* for an Order of Possession for cause, and the tenant has applied under the *Residential Tenancy Act* for more time to dispute a notice to end tenancy, for an order cancelling a notice to end tenancy for cause, and to recover the filing fee from the landlord for the cost of the application.

The parties attended, gave affirmed testimony, and each provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act* to an Order of Possession for cause?
- Should the tenant be permitted more time than set out in the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act* to dispute the notice given by the landlord to end the tenancy?
- Should the notice to end tenancy be cancelled?

Background and Evidence

The landlord testified that the landlord purchased the rental unit in July, 2010, which is a manufactured home within a manufactured home park. The landlord is not the landlord of the manufactured home park. The tenant is the landlord's ex-boyfriend who moved into the manufactured home at the same time as the landlord, but the tenant is not part owner, although both parties contributed to the down payment. The parties separated in April, 2012 at which time the landlord moved out and the tenant remained in the home. The tenant subsequently agreed to purchase the home for \$10,000.00 at the

rate of \$500.00 per month. No written agreement was made, nor was there any legal transfer of the title to the tenant.

The landlord further testified that the tenant made sporadic payments but still hasn't made any since August, 2014. The tenant offered to pay \$4,000.00 but the landlord refused because \$5,000.00 was still owed. The parties had also discussed transferring title through a Notary Public and making payments through the Court, but the tenant never followed through with that or with the insurance.

The landlord issued a 1 Month Notice to End Tenancy for Cause and a copy has been provided for this hearing. The notice is dated October 1, 2014 and contains an expected date of vacancy of October 31, 2014. The landlord testified that it was served by posting it to the door of the home on October 1, 2014. The reason for issuing the notice is: "Tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord." The landlord testified that the tenant also failed to pay for insurance on the home, and the tenant's failure to comply with the terms of the agreements justify issuing the notice, and that was the recital on the form that closely represented the circumstances.

The landlord seeks an Order of Possession so that the manufactured home can be sold and the landlord will give the tenant a portion of the proceeds.

The tenant testified that there was a breakdown of a common-law union between the parties. The tenant has paid the landlord \$5,000.00 to this point as well as paying off the chattel mortgage with the bank.

The tenant further testified that there is no tenancy agreement between the parties, and the tenant wants to pay \$500.00 per month for the next 10 months until the \$5,000.00 is paid off, and then transfer the title into the tenant's name. The tenant agrees to commence the payments in December, 2014.

Analysis

Firstly, the tenant has applied for more time than permitted by legislation to dispute the notice to end tenancy issued by the landlord. The notice is dated October 1, 2014 and the tenant filed the application for dispute resolution disputing the notice on October 10, 2014. The time to dispute such a notice is within 10 days of receipt or deemed service, which I find is a time limit that has been met by the tenant, and no further time is warranted. The tenant's application in this regard is hereby dismissed.

I also find that the *Manufactured Home Park Tenancy Act* does not apply because the landlord is not the landlord of the manufactured home park.

A tenancy agreement is made under the *Residential Tenancy Act*, even if not in writing, by virtue of a landlord collecting rent from a tenant. In this case, it is clear that neither party entered into any contract with the intent to rent. The parties agree that the

payments made by the tenant were toward the buy-out of the landlord's share of the manufactured home, not to rent it. Therefore, I find that the *Residential Tenancy Act* does not apply. I further find that the notice to end the tenancy issued by the landlord was not issued under the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*, is of no force and effect, and I hereby cancel it.

Since the tenant has been successful with the application, the tenant is entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the tenant's application for more time to dispute a notice to end tenancy is hereby dismissed.

The 1 Month Notice to End Tenancy for Cause issued on October 1, 2014 is hereby cancelled.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00 as recovery of the filing fee.

This order is final and binding and may be enforced.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 02, 2014

Residential Tenancy Branch

