



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fiala First Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for cause and for a Monetary Order for unpaid rent or utilities. At the outset of the hearing the landlord withdrew their application for unpaid rent or utilities.

The tenant, the landlord's agent and Counsel for the landlord attended the conference call hearing. The parties gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence.

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

The parties agreed that this tenancy started on August 01, 2012 for a fixed term of one year. As the parties did not enter into a new fixed term agreement the tenancy converted to a month to month tenancy. Rent for this site is \$400.00 a month due on the first of each month. The tenant is also required to pay the utilities.

Counsel for the landlord, asked the landlord to confirm that utilities are not included in the rent but property taxes are included. The landlord agreed with this. Counsel for the landlord stated that rent was late in May, June July and August, 2014 and a One Month Notice to End Tenancy for cause (the Notice) was served upon the tenant on August 15, 2014. The rent continued to be late for September, October, November and December, 2014.

The Notice was served by registered mail on August 15, 2014 and has an effective date of September 30, 2014. The Notice provided one reason to end the tenancy; that the tenant has been repeatedly late paying rent.

The landlord testified that they have accepted rent from the tenant since the effective date of the Notice. As they had no way of contacting the tenant, they could not inform the tenant that they accepted the late payments after the Notice was served for use and occupancy and the landlord had no intention of re-instating the tenancy.

Counsel for the landlord stated that the landlord is trying to follow the *Manufactured Home Park Tenancy Act (Act)* concerning late payments of rent. There is not an additional requirement under the *Act* for the landlord to notify the tenant that any rent accepted after the Notice is served must be accepted for use and occupancy only.

The tenant testified that most payments made for rent are late because the tenant does not get paid on the 1st of each month. The tenant suggested a solution would be for the tenant to e- transfer money to the landlord on the 1st of each month.

Counsel for the landlord requested an Order of Possession effective for the end of January, 2015.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Policy Guideline 11 to the *Act* provides information about the question of waiver of the Notice. This states, in part, that

“The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End Tenancy has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- Whether the receipt shows the money was received for use and occupation only.
- Whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- The conduct of the parties."

I find the landlord did receive rent from the tenant after the effective date of the Notice and there is insufficient evidence to show that the landlord informed the tenant that this money was accepted for use and occupancy only and that it did not reinstate the tenancy. The landlord continued to accept the rent from the tenant from September to January and only filled an application in December. The landlord's argument that she could not inform the tenant as they had no way of contacting the tenant has little merit as the landlord does know the tenant's address.

Consequently, it is my decision that the landlord has effectively waived the One Month Notice and reinstated the tenancy. The landlord should ensure they are familiar with all aspects of the *Act*, regulations and guidelines that govern them. Counsel for the landlord argued that as this question of waiver is not included in the *Act* it cannot be enforceable under the *Act*. However, I have considered the policy guideline in making

my findings as policy guidelines are inextricably linked and associated with an *Act* and provided for guidance where the *Act* is silent on the issue of re-instatement of tenancies.

Conclusion

The landlord's application for an Order of Possession is dismissed without leave to reapply.

If the tenant continues to pay rent late the landlord is at liberty to serve the tenant with a new One Month Notice to End Tenancy or a 10 Day Notice to End Tenancy for unpaid rent or utilities.

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: January 28, 2015

Residential Tenancy Branch

