



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OP, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the Landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. The tenants confirmed receipt of the hearing documents on April 18, 2015, sent via registered mail.

At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present oral evidence, to ask questions of the other party and to make submissions during the hearing.

Preliminary Matters

The tenants confirmed receipt of the landlord's evidence with the application.

The tenant's evidence was given to the landlord's agent on April 26, 2015. As the tenants had sufficient notice of the hearing they were required to submit their rebuttal evidence to the landlord at least 7 days prior to the hearing. I determined, in accordance with the Residential Tenancy Branch Rules of Procedure that as the landlord received the tenant's evidence only two days before the hearing the tenant's evidence must be set aside. The tenants were at liberty to make oral submissions.

The tenants stated that they wanted a delay in the hearing and asked if they should have legal counsel. I explained that an adjournment would not be granted to allow the tenants to further time to prepare as they have had ample opportunity to do so prior to the hearing date. Notice given on April 18 for a May 29, 2015 hearing provided the tenants with a fair opportunity to be heard. I also determined that a delay in hearing the

matter would prejudice the landlord. Neglect to prepare for a hearing does not form the basis for adjournment.

Rent is currently paid in full.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession based on an undisputed 10 day Notice to end tenancy for unpaid rent issued on April 4, 2015?

Background and Evidence

The tenancy commenced on July 31, 2014. Site rental is \$405.00 due on or before the first day of each month.

Rent is paid via cheques mailed directly to the landlord by a government agency. The payments are made by this method on the request of the tenants.

There was no dispute that the rent has normally been paid prior to the first day of each month. Rent was not paid by or on the first day of April 2015.

The tenants confirmed that on April 4, 2015 they received a ten day Notice to end tenancy for unpaid rent that was issued on that date. The Notice had an effective date of April 14, 2015.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$405.00 within five days of service. The Notice also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

There was no dispute that April rent was not paid until April 16, 2015. Rent was paid to the landlord's agent who was called into the hearing to provide affirmed testimony. The agent said that the cheque had been issued on April 13, 2015 but given to the landlord on April 16, 2015. The agent said that at the time of payment the tenants raised the matter of the eviction Notice and she told them that they had been required to pay the rent within five days. A receipt was issued for payment.

The tenants stated that on April 16, 2015 the agent told them they did not need to worry about disputing the Notice as it was meant as a warning. The agent said that was not true and that she did not tell the tenants they did not need to be concerned.

Approximately one week prior to May 1, 2015 a receipt was issued to the tenants for May 2015 rent. The tenants confirmed that by this time they had received the Notice of hearing. The agent discussed the hearing with the tenants and told them they would need to attend and that they could provide input at the hearing. The agent said that she

had mentioned that the tenants needed to vacate on April 13, 2015 and that the landlord had the right to evict them.

The tenants said that they spent the funds meant for April rent as they thought it was transportation funds. The tenants could not explain how they accessed funds that would have gone directly to the landlord via cheque. The tenants said they received the Notice on a long weekend, which caused them a delay in obtaining payment but the landlord told them not to worry about it.

The tenants did not dispute the Notice as they did not understand the legal process and were overwhelmed. The tenants said they were not aware of the procedures and that they thought it would be acceptable to pay outside of the five days. The tenants said that the agent told them the landlord could choose to enforce the Notice or not. The landlord was also planning on not cashing the April rent cheque.

The landlord checked with the Ministry responsible for issuing and mailing the rent payments and was assured that a mistake could not have been made as it was only the tenants that could alter the method of payment. As the rent did not arrive as it always had it appears the tenants had made some sort of change with the government agency.

The landlord pointed out that there have been other issues with the tenancy related to cause. His agent would not have indicated the tenancy could continue as she is well aware of the problems the tenants have caused.

Analysis

As the tenants confirmed receipt of the Notice on April 4, 2015 I find that the Notice was served on that date.

Section 39(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. Therefore, as the tenants received the Notice on April 4, 2015 I find that the Notice contained the correct effective date of April 14, 2015.

Therefore, I find that the tenants were served with a Notice to End Tenancy that required the tenants to vacate the rental unit on April 14, 2015, pursuant to section 39 of the Act.

Section 39(4) of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenants stated they did not dispute the Notice as they did not understand the legalities involved. However, the Notice cannot be misunderstood. On the first page of the Notice the tenants are warned that they may be evicted should they fail to pay the rent or dispute the Notice within five days. Whether it was a long weekend or some other impediment occurred, the legislation requires payment to be made in full within five days.

From the evidence supplied by each party I find, on the balance of probabilities there could be no mistake that the landlord wished to evict the tenants. When rent was paid on April 16, 2015 the Notice was discussed. If the tenants had not been concerned they would not have raised the issue of eviction at the time payment was made. Several days later the tenants received the Notice of hearing; again an indication from the landlord that the Notice was being enforced.

I preferred the testimony of the landlord's agent who did not express any ulterior motive and who I found provided thoughtful recollection of her interactions with the tenants when payment was made. I have rejected the tenant's submission that the landlord had indicated the tenants would not be evicted as contrary to all the actions taken by the landlord. The landlord applied for dispute resolution the day prior to the payment of April 2015 rent and the Notice of hearing was given to the tenants prior to the May 2015 payment made. On April 16, 2015 the tenants were told the Notice could be enforced.

Even though the receipts issued were not for use and occupancy, I find that the landlord adequately expressed the intention to proceed with eviction and that the question of waiver could not have been implied. As the tenants occupied the site the landlord was entitled to payment on a per diem basis beyond the effective date of the Notice.

The tenants offered no sufficient explanation as to why they failed to dispute the Notice once they received the landlord's Notice of hearing. If the tenants had evidence that the landlord had indicated the tenancy would continue the tenants were free to bring that evidence forward.

Therefore, I find on the balance of probabilities, that the landlord was consistent in the message that the Notice was to be enforced and that payment made for April and May 2015 rent did not reinstate the tenancy. The actions of the landlord, by telling the tenants the Notice could be enforced and by serving the tenants with Notice of the hearing prior to the date May 2015 rent was paid formed sufficient Notice to the tenants that the tenancy would end based on conclusive presumption, pursuant to section 39(5) of the Act.

On this basis I will grant the Landlord an Order of possession that is effective **two days after service to the tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

As the landlord's application has merit I find that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$50.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

Conclusion

The landlord is entitled to an Order of possession.

The landlord is entitled to filing fee costs.

This decision is final and binding and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 55(1) of the *Manufactured Home Park Tenancy Act*.

Dated: May 29, 2015

Residential Tenancy Branch

