Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC O

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on May 13, 2015 seeking to obtain an Order of Possession for cause and for other reasons. In the details of the dispute the Landlord wrote the following:

> *We request an order of possession because we the landlord anticipate the tenant will not be vacated by May 31, 2015. They did not dispute the eviction notice received April 28, 2015. We are also applying for $50.00 filing fee.*
>
> [Reproduced as written]

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The hearing was conducted via teleconference and was attended by two representatives for the Landlord (the Park Manger and the Landlord's Agent) and both Tenants. The Landlord's application for Dispute Resolution listed the Landlord's corporate name and the name of the Landlord's Agent.

Section 1 of the *Manufactured Home Park Tenancy Act,* herein after referred to as the Act, defines "**landlord"**, in relation to a manufactured home site, to include any of the following:

> (a) the owner of the manufactured home site, the owner's agent or another person who, on behalf of the landlord, permits occupation of the manufactured home site under a tenancy agreement;
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant whose manufactured home occupies the manufactured home site, who

(i) is entitled to possession of the manufactured home site, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the manufactured home site;

(d) a former landlord, when the context requires this;

Based on the foregoing, I concluded that both the Park Manager and the Agent met the definition of landlord. Therefore, for the remainder of this decision, submissions from either the Park Manger or the Agent will be referred to as being from the Landlord. Accordingly, terms or references to the Landlord importing the singular shall include the plural and vice versa, except where the context indicates otherwise

Each person gave affirmed testimony and the Tenants confirmed receipt of the Landlord's application and notice of hearing documents. The Tenants acknowledged receipt of 57 pages of documentary evidence from the Landlord, while the Residential Tenancy Branch (RTB) received 58 pages. Upon further review it was determined that the Tenants were not served the picture that was included at page 23 of the evidence received by the RTB. All other documents were considered to be received by the Tenants.

The Rules of Procedure provide that when possible the applicant's evidence must be submitted with the application for Dispute Resolution. Rules of Procedure 3.14 provides that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the RTB as soon as possible and not less than 14 days before the hearing.

The Landlord submitted their documentary evidence to the RTB on May 19, 2015. They acknowledged that it was possible that the one picture may have been missed while compiling the packages. They stated they were aware that it would not be considered here as it was not served upon the Tenants.

Based on the foregoing, I find the 57 pages of the Landlord's evidence received by the Tenants and the RTB was served in accordance with the Rules of Procedure and will be considered, if relevant to my Decision. The one picture that was not properly served upon the Tenants will not be considered.

The Rules of Procedure 3.15 provide that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are in intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. ***In all events***, the respondent's evidence **must** be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing [my emphasis added].

The Landlords testified that the Tenants personally served them the Tenants' evidence on Tuesday, three days prior to this hearing. They argued that the Tenants' documentary evidence was not served within the required timeframes and requested that it not be considered.

The Tenants testified that they delivered their evidence to the RTB on June 22, 2015 and confirmed that they did not serve the Landlord with their evidence until Tuesday June 23, 2015, three days before this hearing.

Based on the above, I find the Tenants' evidence was not served in compliance with the requirements of the Rules of Procedure 3.15. Accordingly, I declined to consider the Tenants' documentary evidence. I did consider the Tenants' oral testimony.

During the hearing each party was given the opportunity to provide relevant oral evidence, respond to each other's testimony, and to provide closing remarks. Following is a summary of the relevant oral submissions and the Landlord's documentary evidence.

Issue(s) to be Decided

Has the Landlord met the burden of proof to be granted an Order of Possession?

Background and Evidence

The undisputed evidence was the Tenants entered into a written month to month tenancy for a manufactured home park tenancy site that began on March 1, 2013. As per the tenancy agreement rent began at $819.00 per month and has subsequently been increased to the currently amount of $861.00 per month.

The Landlord testified that the Tenants were served four breach letters over several months and when the Tenants did not rectify the breach the Landlord served the Tenants a 1 Month Notice to end tenancy for cause on April 24, 2015 by registered mail.

Canada Post tracking information was submitted in the Landlord's evidence which indicated the Tenant, P.P. signed for the registered mail on April 28, 2015.

The Landlords argued that the Tenants did not file an application to dispute the 1 Month Notice within the required time frame, therefore; the Landlord was seeking an Order of Possession in accordance with section 40(4) of the Act.

The Tenants testified and confirmed that they had been served 4 breach letters and the 1 Month Notice to end tenancy as described by the Landlord. They submitted that they have never dealt with these types of issues before and did not know what to do. They argued that they have dealt with various park managers regarding this issue and were told verbally that they could keep their shed in the location it was built.

The Tenants acknowledged that the 2 page 1 Month Notice submitted in the Landlord's evidence was the same Notice they received April 28, 2015 by registered mail. The 1 Month Notice was issued pursuant to Section 40(1)(g) of the Act listing an effective date of May 31, 2015 for the following reasons:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The Tenants asserted that they had read the 1 Month Notice when they had received it and had a discussion shortly afterwards with the Park Manager, at which time the Park Manager only discussed "life" and not the Notice.

The 1 Month Notice was reviewed during the hearing during which the parties were directed to the following information written on the Notice:

TENANT: YOU MAY BE EVICTED IF YOU DO NOT RESPOND TO THIS NOTICE.

[Reproduced as written in bold letters on the top of page 1 of the 1 Month Notice]

INFORMATION FOR TENANTS WHO RECEIVE THIS NOTICE TO END TEANNCY

- You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. An arbitrator may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.
- If you do not file an Application within 10 days, you are presumed to accept his Notice and must move out of the rental unit or vacate the site by the date set out

on page 1 of this Notice (You can move out sooner.) If you do not file an Application, or move or vacate, your landlord can apply for an Order of Possession that is enforceable through the court.

[Reproduced as written in the third section of page 2 of the 1 Month Notice]

The Tenants responded that they were not aware of what to do as they had never rented in B.C. before.

In closing, the Landlord requested that the Order of Possession be granted as previously requested.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenants in a manner that complies with the Act.

Section 40(4) of the Act stipulates that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

In this case the Tenants would have had to file their application for dispute no later than May 8, 2015**.** At the time the Landlord filed their application for an Order of Possession on May 13, 2015, the Tenants had not made application to dispute the 1 Month Notice.

Section 40(5) of the Act stipulates that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

Notwithstanding the Tenants' submissions that they did not know what to do, I find the Tenants were sufficiently informed of the requirements to dispute the 1 Month Notice within 10 days, as that information was clearly written on the 1 Month Notice they were served, as documented above.

As per the foregoing, I conclude the Landlord has met the burden of proof and I grant their request for an Order of Possession.

Section 65(1) of the Act stipulates that the director may order payment or repayment of a fee under section 52 (2) (c) *[starting proceedings]* or 72 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **$50.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Landlord has been granted an Order of Possession effective **2 Days upon Service** to the Tenants. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

The Landlord has been issued a Monetary Order for **$50.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the British Columbia Small Claims Court and 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: June 26, 2015

Residential Tenancy Branch