



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Crystal River Court Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, CNR, CNC, MT, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on June 16, 2015 for:

1. An Order cancelling a notice to end tenancy - Section 39;
2. An Order allowing more time for the application to cancel the notice to end tenancy - Section 59;
3. A Monetary Order for compensation - Section 60; and
4. An Order to recover the filing fee for this application - Section 65.

The Landlord applied on June 19, 2015 for an Order of Possession - Section 55.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the dispute outside the jurisdiction of the Act?

Is the Tenant entitled to more time to make an application to cancel a notice to end tenancy?

Is the Landlord entitled to an order of possession?

Background and Evidence

The tenancy started on September 1, 2012 with monthly rent of \$395.00 payable on or before the first day of each month. The rent was increased over the length of the

tenancy with the most recent increase to \$415.00 effective June 1, 2015. On June 3, 2015 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door. As the Landlord was aware that the Tenant lived in another location the Landlord also served the Tenant with the Notice by sending it registered mail on June 5, 2015 to that other location. The Landlord also at the same time served the Tenant with a one month notice to end tenancy for cause. The Tenant applied to dispute the Notices on June 16, 2015.

The Tenant states that the dispute is a matter in front of the Supreme Court and argues that there is no jurisdiction to determine this dispute. The Tenant states that while there is nothing in front of the Supreme Court that deals with rent payments under the tenancy agreement, the matter of possession of the unit is a matter in front of the Supreme Court as the matter of the Landlord's actions to terminate the tenancy, to interfere with the assembly of the trailer on the pad and to force the Tenant to abandon the trailer on the pad are included in the claims. The Tenant states that the abandonment would occur if the Landlord were to obtain possession of the pad as the Tenant has nowhere to move it in the lower mainland and that such a move would result in a significantly reduced value of the trailer. Other matters in front of the Supreme Court are related to the Landlord failure to prepare the lot and provide drains. The Tenant states that he cannot sell the unit on the pad as the value of the trailer has been reduced by the Landlord's actions. The Tenant states that the Landlord interfered with the completion of the trailer and that only 90% has been completed due to the Landlord's actions. The Tenant states that the Landlord is alleging that the Tenant has failed to make repairs and is seeking to end the tenancy based on the breach of a material term and that this matter is in front of the Supreme Court.

The Landlord states that there is nothing in the Supreme Court matter that is related to the payment of rent or the possession of the pad. The Landlord states that they are not interested in owning or seizing the unit and only want the pad. The Landlord states that the Supreme Court action is about a dispute over pad improvements and that the Tenant acted on its own pad without right to cause damage to surrounding pads. The

Tenant states that the Landlord failed to provide the pad as required so the Tenant acted to remedy the situation.

The Tenant states that he received the Notice while out of town and did not have access to the internet to make an application. The Tenant states that he had nobody to assist him in making an application within the required time. The Tenant states that he does not have the specific dates when he was out of town. The Tenant also states that he received the Notice on June 10, 2015 by registered mail while in Abbotsford. The Tenant requests more time to make the application to dispute the Notice.

The Tenant states that while he was aware of the rental increase he simply forgot for June 1, 2015 and was short \$10.00. The Tenant states that after he received the Notice in the mail he increased the next rent. The Tenant states that for July 2015 he paid the full rent of \$415.00 and that for August 2015 he paid rent of \$425.00 to include the shortfall for June 2015. The Landlord states that the July 2015 rent cheque was only \$405.00. The Landlord states that he did not provide receipts to the Tenant as he was waiting for this hearing. The Landlord states that it was very clear that there was no intent to reinstate the tenancy as the Landlord has not cashed the cheques and also served a one month notice to end tenancy for repeated unpaid rent.

Analysis

Section 51(2) of the Act provides that an application for dispute resolution may not be determined where, inter alia, the dispute is linked substantially to a matter that is before the Supreme Court. The Tenant concedes that nothing in the claim before the Supreme Court deals the Tenant's obligation to pay rent. While this recurring obligation is ultimately related to the right to possess the pad, I am unable to conclude on a balance of probabilities that any of the matters being disputed at the Supreme Court are in relation to the possession of the pad. Based on a reading of the claim document provided and the Tenant's evidence I consider the matters primarily to be in relation to damages over the preparation of the pad. I find therefore that the matter of unpaid rent is properly before me.

As the Tenant has claimed bad faith by the Landlord in seeking to terminate the contract by making unreasonable demands, I find that the Tenant's claim of harassment for the Landlord's issuance of notices to end tenancy in the present application to be a dispute that is linked substantially to a matter before the court and I dismiss this claim.

Section 39 of the Act provides that that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") the tenant must, within five days, pay the full amount of the arrears indicated on the Notice, in which case the notice has no effect, or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. While the Landlord posted the Notice on the door and by registered mail, as the Landlord knew the Tenant did not reside at the unit and considering that the provision of a notice to end tenancy is a time sensitive notice, I find that the Tenant had 5 days from the receipt of the registered mail of the Notice to make its application to dispute the Notice. As a notice is deemed to be received in 5 days where sent by registered mail, I find that the Notice was deemed received on June 10, 2015 and that the Tenant had until June 15, 2015 to make its application to dispute the Notice. As the Tenant made its application on June 16, 2015 I find that the Tenant was out of time to dispute the Notice.

Section 59 of the Act provides that a time limit may be extended only in exceptional circumstances. Although the Tenant states that he was unable to make its application to dispute the Notice as the Tenant was working out of town, I note that the Tenant was at its residence on the date the Notice was received and there is no evidence that indicates an application could not have been made that same day. I further do not consider the Tenant's work commitments to be evidence of exceptional circumstances. As a result I find that the Tenant is not entitled to an extension of the time limit.

Section 39(5) provides that where a tenant does not pay the rent or make its application to dispute a notice to end tenancy, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the manufactured home site to which the notice relates by that date.

As the Tenant did not make its application to dispute the Notice within 5 days receipt of the Notice I find that the Tenant is conclusively presumed to have accepted the effective date of the notice and must vacate the site. As the Tenant has provided the rent for August 2015 to the Landlord I make this order of possession effective 1:00 p.m. on August 31, 2015.

As the tenancy has ended there is no need to consider the Tenant's claim to cancel the one month notice to end tenancy. As none of the Tenant's claims have any merit, I dismiss the application.

Conclusion

The Tenant's application is dismissed. **I grant** an Order of Possession to the Landlord effective 1:00 p.m. on August 31, 2015.

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: August 20, 2015

Residential Tenancy Branch

