



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the *Manufactured Home Park Tenancy Act*, (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on August 5, 2015, to make emergency repairs for health and safety reasons and provide services or facilities required by law.

Both parties appeared. At the outset of the hearing the landlord requested a verbal order of possession.

Preliminary matter

On October 5, 2015, the tenant’s application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on July 23, 2015, was heard and a decision rendered.

The decision reads in part,

“With this in mind I find the tenant should have paid the rent and utilities for July and failed to do so in accordance with s. 26 of the *Act*. **I am not therefore prepared to cancel the 10 Day Notice** as the rent and utilities for July were not paid within five days of the Notice having been served upon the tenant. There is no provision under the *Act* for me to allow the tenant to deduct wages owed from her rent or utilities.”

[Reproduced as written]

[My emphasis added]

“Consequently, the tenants application to cancel the 10 Day Notice dated July 23, 2015 is dismissed and the Notice remains in force and effect. The 10 Day Notice dated August 05, 2015 is hereby cancelled.”

[Reproduced as written]

[My emphasis added]

Since the Arbitrator found that the tenancy legally ended based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on July 23, 2015, and cancelled the subsequent notice issued on August 5, 2015, I find the legal principal of Res Judicata would apply as this matter was already heard and decided upon at the hearing of October 5, 2015.

While the tenant indicated subsequent rent was paid for August, I find that the landlord was entitled to collect occupancy rent until a decision was made on the tenant's outstanding applications. Acceptance of occupancy rent does not automatically reinstate the tenancy, as the issue of the tenancy was to be decided upon by the Arbitrator.

Therefore, I dismiss the tenant's application without leave to reapply.

As the tenant's application is dismissed and the landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

Section 48(1) of the Act states:

48 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the manufactured home site to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession.

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: October 22, 2015

Residential Tenancy Branch

