



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on March 5, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Landlord was personally served on the Tenant(s) on August 26, 2015. I find the Application for Dispute Resolution filed by the Tenant(s) was personally served on the landlord's agent.

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to recover the cost of the filing fee?
- c. Whether the tenant is entitled to a repair order?
- d. Whether the tenant is entitled to recover the cost of the filing fee?
- e. Whether the tenant can dispute the eviction due to harassment by landlord and manger from another tenant?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on June 1, 2007. The present rent for the manufactured home pad is \$410.85 per month payable in advance on the first day of each month.

Analysis:

On March 5, 2015 the landlord served a one month Notice to End Tenancy on the Tenants that set the end of tenancy for April 30, 2015. The grounds set out in the one month Notice to End Tenancy are as follows:

Landlord's notice: cause

40 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(c) the tenant or a person permitted in the manufactured home park by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

...

(e) the tenant or a person permitted in the manufactured home park by the tenant has caused extraordinary damage to a manufactured home site or the manufactured home park;

(f) the tenant does not repair damage to the manufactured home site, as required under section 26 (3) [*obligations to repair and maintain*], within a reasonable time;

The Notice to End Tenancy included a notice that the tenant 10 days to file a dispute with the Residential Tenancy Branch and if he failed to file an Application within that period the Act proved that you are deemed to have accepted the end of tenancy and you must move out or vacate the site within that 10 day period.

The tenant(s) have not filed an Application for Dispute Resolution disputing this Notice to End Tenancy. Section 40(4) and (5) of the Manufactured Home Park Tenancy Act provides as follows:

40(4) 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.

(5) 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 manufactured home site by that date.

Policy Guideline #36 includes the following:

Notice to End

Application for Arbitration Filed After Effective Date

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

For example, if a Notice to End has an effective date of 31 January and the tenant applies to dispute said Notice to End on 1 February, an arbitrator has no jurisdiction to hear the matter ***even where the tenant can establish grounds that there were exceptional circumstances***. In other words, once the effective date of the Notice to End has passed, there can be no extension of time to file for arbitration.

The tenant(s) attempted to argue the end of tenancy on the merits. He disputed many of the allegations made in the Notice to End Tenancy and read a submission he made that the landlord is attempting to end his tenancy in an attempt to appease a complaining tenant. I determined Residential Tenancy Act and Policy Guidelines do not permit an arbitrator to consider the tenant's submission on the merits of the Notice where the Tenant failed to file an Application to cancel the Notice and the effective end of tenancy date has passed. The law does not permit an arbitrator to grant an extension of time in those circumstances. The tenancy has come to an end the tenant must vacate.

I determined it was appropriate to hear evidence as to whether the landlord reinstated the tenancy and I asked the parties for testimony and submission on that issue. I found the tenant's testimony on this point to be evasive and confusing. I am satisfied based on testimony presented that the landlord has not agreed to reinstate the tenancy for the following reasons:

- I accept the oral testimony of the landlord that he did not agree to reinstate the tenancy.

- I do not accept the submission that the landlord's agreement to give the tenant a 3 month extension to allow him an opportunity to make the home presentable in order to sell the manufactured home amounts to reinstatement.
- The tenant denies have conversations with the landlord about the issue of a 3 month extension to make the manufactured home more presentable. However, this is in conflict with the letter of the landlord dated July 6, 2015 confirming the many issues the landlord had faced with regard to this tenancy and insisting the tenant immediately list the manufactured home park for sale. I accept the landlord's evidence this letter was discussed with the tenants on that date. Further, I contents of the letter support the testimony of the landlord that he was not agreeing to reinstate the tenancy or waive its rights under the March 5, 2015 Notice to End Tenancy. .
- The testimony of the manager with respect to the problems was having with the tenant is not consistent with a landlord who agreed to reinstate the tenancy.

In conclusion I am satisfied the landlord has not reinstated the tenancy nor waived his rights under the March 5, 2015 Notice to End Tenancy. I determined the failure of the landlord to take steps to obtain an Order for Possession earlier than he did for compassionate grounds does not amount to a reinstatement of the tenancy.

Landlord's Application - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession. The rent has been paid for October. I set the effective date of the Order for Possession for October 31, 2015. I further ordered that the tenant pay to the landlord the sum of \$50 for the cost of the filing fee.

The tenant must be served with this Order for Possession as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Tenant's Application:

I ordered that the tenant's application be dismissed. There is no basis for setting aside the eviction notice. The tenant failed to present evidence of a repair issue. In any event the tenancy is coming to an end. The tenant has not been successful and is not entitled to recover the cost of the filing fee.

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*, SBC 2002, c. 77.

Dated: October 13, 2015

Residential Tenancy Branch

