



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STONECLIFF PROPERTIES LTD. (dba STONECLIFF PARKS LTD.)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL, MNR, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested an Order of Possession based on a 12 Month Notice to End Tenancy for Landlord's Use, a Monetary Order for unpaid rent and, to recover the filing fee.

Only the Landlord appeared at the hearing and was represented by A.G., the Business Administrator, and V.B., who identified herself as the owner of the company (collectively referred to as the "Landlord"). They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified they served the Tenant with the Notice of Hearing and their Application on September 18, 2015 by registered mail to the address provided by the Tenant. Under the *Manufactured Home Park Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of September 23, 2015 and had notice of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Should the Landlord receive monetary compensation for unpaid rent?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

Neither A.G. nor V.B. were able to provide evidence as to when the tenancy began. V.B. testified that when she purchased the manufactured home park the previous owner failed to deliver documentation relating to the existing tenancies. Apparently the previous owner inherited the manufactured home from his mother. In any case, V.B. testified that the Tenant paid monthly pad rent in the amount of \$216.00 per month.

A.G. testified that the Landlord issued a 12 Month Notice to End Tenancy on August 21, 2014 (the "Notice"). A.G. testified that the Tenant was served by registered mail and that she was advised through tracking the package that he retrieved the Notice. The Landlord confirmed that the Tenant did not make an application to dispute the Notice.

A.G. testified that the manufactured home park was "closed on August 31, 2015".

V.B. testified that the Tenant was residing in the manufactured home until September 2015 when the Tenant appears to have abandoned the manufactured home. She further stated that he failed to pay rent for June or August 2015, leaving \$432.00 owing.

Both V.B. and A.G. confirmed that the Landlord did not pay the Tenant the 12 month's compensation as required by the *Act*, and that it was their intention to pay him once he moved his manufactured home from the park.

Analysis

Section 42 of the *Manufactured Home Park Tenancy Act*, provides that a Landlord may end a tenancy for Landlord's use. This is subject to section 44, which provides that a Landlord must provide a Tenant, on or before the effective date, the equivalent of 12 months' rent. For greater clarity, I reproduce sections 42 and 44 as follows.

Landlord's notice: landlord's use of property

- 42** (1) Subject to section 44 [*tenant's compensation: section 42 notice*], a landlord may end a tenancy agreement by giving notice to end the tenancy agreement if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park.

(2) A notice to end a tenancy under this section must end the tenancy effective on a date that

(a) is not earlier than 12 months after the date the notice is received and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(b) if the tenancy agreement is a fixed term tenancy agreement, is not earlier than the date specified as the end of the tenancy.

(3) A notice under this section must comply with section 45 *[form and content of notice to end tenancy]*.

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 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.

Tenant's compensation: section 42 notice

44 (1) A landlord who gives a tenant notice to end a tenancy under section 42 *[landlord's use of property]* must pay the tenant, on or before the effective date of the notice, an amount that is equivalent to 12 months' rent payable under the tenancy agreement.

(2) In addition to the amount payable under subsection (1), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 42 within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of 6 times the monthly rent payable under the tenancy agreement.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find that the Tenant failed to make an application to dispute the Notice within 15 days of being served. Accordingly, the Tenant is conclusively presumed, pursuant to section 42(4) to accept the end of the tenancy. The Landlord is therefore entitled to an Order of Possession pursuant to section 48.

I further find that section 44 is mandatory. It provides that a Landlord *must* pay the Tenant *on or before the effective date of the notice*, an amount that is equivalent to 12 months' rent payable under the tenancy agreement. While not specifically provided for in the *Manufactured Home Park Tenancy Act*, these funds are generally used by Tenant's who receive such a Notice to facilitate moving a manufactured home, and securing an alternate pad rental.

The *Act* does not require the Tenant to make an application to receive these funds; rather, it is the issuance of a 12 Month Notice to End Tenancy pursuant to section 42 which triggers the Landlord's obligation. Further, it is notable that section 42 provides that a Landlord may end a tenancy by issuing a 12 Month Notice, but this is specifically *subject to section 44*.

As the Tenant failed to pay rent for June and August the Tenant is entitled to receive compensation equivalent to 10 months' rent from the Landlord. Accordingly, I find that the Landlord may end this tenancy, but must *first* provide the Tenant with \$2,160.00 representing the remaining 10 months' rent payable under the tenancy agreement. Once that \$2,160.00 is paid to the Tenant, the Landlord may serve the Order of Possession, which will be effective two days after service.

The Tenant is entitled to a Monetary Order for \$2,160.00 and must serve the Landlord with the Monetary Order. The Monetary Order may be filed and enforced in the B.C. Provincial Court.

The Landlord indicated the manufactured home had been abandoned. If the Tenant fails to move the manufactured home, the Landlord must enforce the Order of Possession through the B.C. Supreme Court. Should the Landlord incur any further costs associated with ending the tenancy they are at liberty to apply for a further Monetary Order.

Conclusion

The Tenant failed to dispute the Notice and is conclusively presumed to accept the end of the tenancy. The Landlord is entitled to an Order of Possession.

As section 42 is subject to section 44 the Landlord must also pay the Tenant the sum of \$2,160.00 representing the 10 months' rent payable under the tenancy agreement. The Tenant is entitled to a Monetary Order for \$2,160.00. Once the Landlord pays the Tenant the \$2,160.00 required under section 44, the Landlord may serve the Order of Possession on the Tenant, which will then be effective two days after service. The Order of Possession may be filed and enforced as an Order of the B.C. Supreme 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 *Residential Tenancy Act*.

Dated: November 23, 2015

Residential Tenancy Branch

