



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WHISPERING PINES VENTURES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

Introduction

This matter dealt with an application by the Landlord for an Order of Possession.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the “hearing package”) by registered mail on September 3, 2015. Based on the evidence of the Landlord and Tenant, I find that the Tenant was served with the Landlord’s hearing package as required by s. 89 of the Act.

The original hearing for this matter was held on September 9, 2015 as an Ex Parte Proceeding under the Direct Request application process which is a non-participatory review and decision of evidence submitted. The Landlord was successful and was awarded an Order of Possession with an effective date of 2 days after service of the Order.

The Tenant filed a review consideration application on September 15, 2015 and was successful in receiving a review hearing to be held on December 2, 2015. Both parties confirmed receiving the Notice of Hearings and evidence packages.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started on July 17, 2009 as a month to month tenancy. Rent is \$384.50 per month payable in advance of the 1st day of each month.

The Landlord said that the Tenant did not pay \$384.50 of rent for August, 2015 when it was due because the Tenant issued an NSF cheque to the Landlord for the August, 2015 rent and as a result, on August 21, 2015 the Landlord registered mailed a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated August 21, 2015 to the Tenant. The Landlord also said she hand delivered the 10 Day Notice to End Tenancy for

unpaid rent and utilities to the Tenant's son at the rental unit. The Tenant's son said he received the 10 Day Notice to End Tenancy for unpaid rent and utilities and he read it.

The Landlord further indicated that the Tenant did pay the rent on September 14, 2015, which was well past the 5 day limit to pay the rent given on the 10 Day Notice to End Tenancy for unpaid rent and utilities. The Landlord said she issued a rent receipt dated September 14, 2015 for "use and occupancy only" and she wrote on the receipt the payment did not restate the tenancy. The Landlord requested to end the tenancy in accordance with her 10 Day Notice to End Tenancy for unpaid rent or utilities.

The Tenant's Advocate said the Tenant has a disability and as a result she was confused about how and where to pay the rent. The Advocate said the Tenant contacted the Landlord to find out what fees should be added to the rent payment and then the Tenant sent the rent payment to the Landlord at the address on the Landlord's letterhead not the Landlord's address on the 10 Day Notice to End Tenancy for unpaid rent and utilities. As a result the address was a previous address of the Landlord's and the rent payment was returned to the Tenant as wrong address. The Tenant's Advocate said the Tenant then paid the rent on September 14, 2015.

The Landlord said the address on the letter head was an old address which she used about 18 months ago and the Tenant has her new address and the Tenant has sent items to the Landlord at the new address before. The Landlord said she did not understand why the Tenant would use the old address as it was not on the 10 Day Notice to End Tenancy for unpaid rent and utilities and the Tenant had her new address.

The Tenant's advocate said the Tenant was confused and in support of that the Tenant submitted a doctor's note that says the Tenant has a disability that may make her confused at time and this should be a factor in the decision to end the tenancy.

The Landlord said the Tenant and her son both read and had possession of the 10 Day Notice to End Tenancy for unpaid rent and utilities and they knew the Landlord's correct address as it was on the Notice to End the Tenancy.

The Tenant's Advocate asked if the Landlord would continue the tenancy as the rent was paid.

The Landlord said she wants to end the tenancy.

The Arbitrator led a discussion to explore a potential settlement agreement. The parties reviewed a number of scenarios to continue the tenancy and how that might happened, but no agreement was arrived at. At the end of the settlement discussion the Landlord and the Tenant agreed to end the tenancy on February 29, 2016 and the Landlord would receive an Order of Possession for 1:00 p.m. February 29, 2016.

It should be noted the parties were told negotiations between them could continue up to February 29, 2016 if the parties want to try to continue the tenancy.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 5 days after it was registered mailed to the Tenant, or on August 26, 2015. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 31, 2015.

I find that the Tenant did not paid the overdue rent by August 31, 2015 and the Tenant did not applied to dispute the 10 Day Notice to End Tenancy for Unpaid rent or utilities. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect February 29, 2016 at 1:00 p.m.

Conclusion

The previous Order of Possession dated September 9, 2015 is cancelled as a result of the following Order of Possession being issued.

An Order of Possession effective February 29, 2016 at 1:00 p.m. has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

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: December 02, 2015

Residential Tenancy Branch

