



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For an order of possession; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 1 Month Notice to End Tenancy for Cause, issued on December 3, 2015, (the "Notice")

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matter

At the outset of the hearing the tenant requested an adjournment until the landlord complies with a previous decision that was made on January 4, 2016. I have reviewed the decision; the file number is noted on the cover page of this decision. The decision granted the tenant a monetary award in the amount of \$1,645.20.

I find that decision is unrelated to the issues to be heard today, and in any event the tenant has the mechanism to enforce the previous order as described in the Act. Therefore, I dismiss the tenant's application for an adjournment.

I further amend their respective applications to reflect that these application are made the jurisdiction of the *Manufactured Home Park Tenancy Act*

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Should the Notice be cancelled or should the landlord be entitled to an order of possession?

Background and Evidence

Unpaid rent

Rent is \$500.00 per month. A security deposit of \$250.00 was paid. The parties agreed that the tenant has not paid any rent for a period of four months and the amount of unpaid rent is the amount of \$2,000.00.

The Notice

The tenant received the Notice on December 6, 2015.

The reason stated in the Notice was that:

- Rental site must be vacated to comply with a government order.

The landlord testified that when they came home on November 22, 2015, they found a business card from the municipal bylaw to contact their office. The landlord stated that they attended the office and they were informed that allowing the tenant to live in the 5th wheel trailer is a violation of the bylaw.

The landlord testified that they then receive a letter from the municipality that all individuals residing or otherwise staying in the recreational vehicle must vacate the vehicle forthwith. Filed in evidence is a copy of the letter dated November 24, 2015.

The tenant testified that the Notice is not valid as there is no vacate date. The tenant further submits that they are not living in the vehicle, nor on the landlord's property.

The tenant writes in their application,

"All paperes signed by (landlord) say I live at (address) (the house) If I live at the house his government notices does not apply, to me ???)

[Reproduced as written]

At the previous hearing, which the file number has been noted on the front of this decision, the Arbitrator found,

"I find that the Tenant's trailer is a "manufactured home" as defined by the Act, and that the Landlord's property is a "manufactured home park" as defined by the Act. The land use may not comply with Municipal bylaws; however, I find that the Act has jurisdiction over this tenancy."

[Reproduced as written]

The landlord argued that tenant or other parties are living in the tenant's trailer and the trailer must be removed to comply with the government order.

Analysis

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

Unpaid rent

In this case, the tenant had not paid any rent for four months; however, the tenant had the right under section 65(2) of the Act to deduct from any rent due to the landlord the monetary order.

As the total amount of rent due to the landlord exceeds the tenant's monetary award, I find the monetary order issued to the tenant on January 4, 2016, in the amount of \$1,645.20, has been fully satisfied by the landlord.

However, I find there is an outstanding amount of rent owed to the landlord. Rent of \$2,000.00 was withheld by the tenant. The tenant was only entitled under the Act to withhold the amount of \$1,645.20. Therefore, I find the landlord is entitled to recover the balance due of unpaid rent in the amount of **\$354.80**.

I find that the landlord has established a total monetary claim of **\$404.80** comprised of the above described amount and the \$50.00 fee paid for this application. As the landlord has a security deposit of \$250.00, although not entitled to collected one under the Act, I find it only reasonable to offset the amount with the amount owed in partial satisfaction of the claim. Therefore, I grant the landlord a formal monetary order in the amount of **\$154.80**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

The Notice

How to end a tenancy is defined in section 40 of the Act, a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the rental site must be vacated to comply with a government order.

In this case, at a previous hearing, it was found that the tenancy was under the Manufacture Home Park Tenancy Act, as the tenant was living in a trailer on the landlord's property.

I find the tenant's written and verbal testimony conflicting and leads me to question the credibility of the tenant. As the tenant had written in their application that they are living in the house on the said property; however, at the hearing the tenant indicated they lived elsewhere off the property.

I find it more likely than not that the tenant is simply trying to attempt to avoid the bylaw; however, the issue of the tenancy has already been determined under the Manufacture Home Park Tenancy Act. The municipality has issued a letter dated November 24, 2015, which has ordered the landlord to comply with the bylaw as the property zoning does not allow residential uses for recreational vehicles.

Further, the tenant indicated that the Notice is not valid as it did not have a date on the effective vacancy date; however, that is not supported by the tenant's own evidence as their Notice has an effective vacate date.

I have reviewed the Notice and I find the Notice complies with the Act; however, I find there is an obvious error, which the landlord wrote the wrong month on the effective vacancy date. As the evidence support the tenancy was to end on January 3, 2016, as that is the date in the government order. Therefore, I amended the effective vacated date to January 3, 2016, pursuant to section 57 and 61 of the Act.

I find the Notice issued on December 3, 2015, has been proven by the landlord and is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the Notice.

As the tenancy legally ended on the amended effective vacancy date of the Notice, I find the landlord is entitled to an order of possession, pursuant to section 50 of the Act, effective **two days** after service on the tenant.

This order may be filed in the Supreme Court as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and an order of possession.

The tenant's application is dismissed.

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: February 05, 2016

Residential Tenancy Branch

