



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *CNL, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Manufactured Home Park Tenancy Act* to cancel a notice to end tenancy for landlord's use of property.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord acknowledged receipt of evidence submitted by the tenant but agreed that he had served the tenant with his evidence package in person on May 30, 2016 for this hearing on June 01, 2016. The tenant stated that he had not had enough time to read or respond. Since the landlord did not serve the evidence package in a timely manner, it was not used in the making of this decision. Both parties gave affirmed testimony.

Issues to be decided

Does this matter fall within the jurisdiction of the *Manufactured Home Park Tenancy Act*? Did the landlord serve a valid notice to end tenancy on the tenant? Does the landlord have the necessary permits required by law to demolish the rental unit?

Background and Evidence

This tenancy started on August 01, 2009. The rental unit is a pad on which the tenant's manufactured home is located. The rent is \$500.00 payable on the first of each month.

The tenant testified that this matter does not fall under the jurisdiction of the *Manufactured Home Park Tenancy Act* because he has made a petition to the Supreme Court regarding this tenancy. The landlord testified that the tenant made his petition on July 25, 2011 and since then has not followed up.

These parties attended at least two hearings prior to this one, on September 16 and November 07, 2013. During both those hearings the tenant testified that the matter was before the Supreme Court and a trial date was set for August 2014. Based on this information, both applications were dismissed for lack of jurisdiction.

The landlord testified and the tenant agreed that there was never any trial set for August 2014. The landlord made enquiries at the Supreme Court and found that the court registry confirmed that there had been no action on the tenant's petition since the date of application of July 25, 2011.

The tenant stated that he had hired a lawyer to plead his case but did not file any documents to support his testimony. The landlord testified that since the notice of application was served, he has not received any further documentation from the tenant or his lawyer and it is now close to five years. The landlord stated that he found out from the Supreme Court that since the tenant had not processed any paper work for a year after application, the case was dormant. The landlord stated that up to this date, the tenant had not served the landlord with papers regarding his intention to proceed with his petition.

The landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The form used by the landlord is one that applies to tenancy agreements under the jurisdiction of the *Residential Tenancy Act*. The notice is dated "March 2016" and has an effective date of May 31, 2016.

The landlord filed evidence to support the service of the notice to end tenancy by registered mail on March 24, 2016. Upon looking up the tracking history, the tenant was notified of the package on April 04 and April 13, 2016. The tenant picked up the package on April 26 and made this application on April 29, 2016.

The reason for the notice is that the rental unit will be occupied by the landlord or a close family member and that the landlord has all necessary permits and approval required by law to demolish the rental unit. The landlord did not file copies of permits that he has allegedly obtained.

Analysis

Section 51.2.c of *Manufactured Home Park Tenancy Act* addresses the jurisdiction of the *Manufactured Home Park Tenancy Act*. This section states that if a dispute is linked substantially to a Supreme Court action, then the arbitrator may decline jurisdiction.

Based on the testimony of both parties, I find that the tenant made a petition to the Supreme Court in July 2011 and since then has not followed up on his petition. The tenant falsely testified at two hearings in 2013 that a trial date was set for August 2014 and based on this information, the Arbitrator found that the dispute was substantially linked to a Supreme Court action and therefore declined jurisdiction and the matters were dismissed.

I accept the landlord's testimony that the Court Registry confirms that there has been no action on the tenant's petition since he made the application in July 2011. In the ensuing time, the tenant has not taken any steps to proceed with this petition in the Supreme Court and continues to use this petition to avoid jurisdiction under the *Manufactured Home Park Tenancy Act*. The tenant admitted that there was no trial date set for August 2014. The tenant stated that based on a conversation with his lawyer, he had testified about a trial date in August 2014.

Based on the above, I find that the tenant has not proceeded with his petition to the Supreme Court, in a reasonable time and therefore has not demonstrated that he intends to proceed. Accordingly, I find that this dispute is not substantially linked to a Supreme Court action and therefore I have jurisdiction in this matter.

The landlord served the notice to end tenancy on the tenant by registered mail on March 24, 2016. Based on the tracking history of the package and in accordance with sections 81 of the *Act*, I find that the tenant has been deemed served with the notice to end tenancy on March 29, 2016, the fifth day after the registered mailing.

Under section 48.2.b of the *Act*, the tenant had to dispute the notice within 15 days, or by April 13, 2016. The tenant made application to dispute this notice on April 29, 2016, some 16 days past the time required by the *Act* to file it.

However, even though the tenant did not make application to dispute the notice in a timely manner, I must also determine whether the notice was provided in the proper form. Sections 42 and 45 of the *Manufactured Home Park Tenancy Act* address the requirements on the part of the landlord to be in compliance with the proper form for serving the tenant with a notice to end tenancy.

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.

Form and content of notice to end tenancy

45 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the manufactured home site,

(c) state the effective date of the notice,

(d) except for a notice under section 38 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

Section 45 of the *Manufactured Home Park Tenancy Act* states that in order to be effective, a notice to end a tenancy must be in writing and when given by a landlord to a tenant, must be in the approved form.

In this case the landlord served the tenant with a notice to end tenancy that does not apply to tenancies governed by the *Manufactured Home Park Tenancy Act*. Since the notice was not in the approved form and was not dated, I find that the notice was not valid and therefore, I set it aside. In addition even if the landlord had served the tenant with a valid notice, the landlord did not file copies of the permits that he alleges he has in his possession. The tenancy will continue.

Conclusion

The notice to end tenancy is not valid and accordingly it is cancelled.

The tenant may make a one-time deduction of \$100.00 from a future rent towards the recovery 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*.

Dated: June 01, 2016

Residential Tenancy Branch