



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LIVINGSTONE RV PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – CNC, O

For the landlord – OPC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a Notice to End Tenancy for cause and other issues. The landlord applied for Order of Possession for cause and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. 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.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the Notice to End tenancy?
- Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that this month to month tenancy for the pad on this mobile home park started on October 22, 2013. Rent for this pad is \$416.10 per month due on the 1st of each month.

The landlord testified that the tenant was personally served a One Month Notice to End Tenancy for cause (the Notice) on June 15, 2016. The tenant confirmed receipt of the Notice on June 15, 2016. A Copy of the Notice has been provided in documentary evidence by the landlord and shows that the Notice has an effective date of July 31, 2016. The Notice provides the following reasons to end the tenancy:

- 1) *The tenant or a person permitted on the residential property by the tenant has*
 - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
- 2) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (i) *Damaged the landlords' property*
 - (ii) *Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
- 3) *The tenant has caused extraordinary damage to the unit/site or property*

The landlord orally requests that the Notice is upheld and seeks an Order of Possession effective on August 31, 2016.

The tenant filed his application to dispute the Notice on July 04, 2016. The tenant was asked if he had any extraordinary, serious or compelling reasons why he did not file his application within the 10 allowable days. The tenant testified that he does not know and has no serious reason why his application was filed late.

Analysis

I accept that the landlord served the tenant with a One Month Notice to End Tenancy on June 15, 2016 in person. Therefore the tenant had 10 days from June 15, 2016 or until to June 25, 2016 to file an application to dispute the Notice. The tenant filed his application on July 04, 2016 which was 19 days after being deemed to have received the Notice.

Section 53(1) of the *Residential Tenancy Act* states:

Director's orders: changing time limits, and provides in part as follows:

59 (1) *The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 52*
(3) [starting proceedings] or 74 (4) [decision on application for review].

The Residential Tenancy Policy Guideline # 36 speaks to “Extending a Time Period” and provides in part: The word “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an Arbitrator to extend that time limit. The word “exceptional” implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a “reason” without any force of persuasion is merely an excuse. Thus, the party putting forward said “reason” must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might **not** be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- The party was in the hospital at all material times.

Consequently, I find that the reasons provided by the tenant for the late filing of their application, do not meet the exceptional circumstances required by section 59(1) of the *Act* to extend a time limit. As the tenant has been unable to demonstrate any exceptional circumstances as to why their application was not filed within the allowable 10 days after receiving the Notice I must dismiss the tenant's application to set aside the Notice.

Page two of the Notice also explains this to the tenant and states "If you do not file an application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page one of the Notice. If you do not move or vacate the landlord can apply for an Order of Possession that is enforceable through the Court".

Section 48(1) of the *Act* states:

48 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if*

(a) the landlord's notice to end tenancy complies with section 45 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

On the basis of this, as I have dismissed the tenant's application I am not required to consider the reasons given on the Notice and I grant the landlord an Order of Possession pursuant to s. 48 of the *Act*. As the effective date of the Notice has since

passed I have issued an Order of Possession effective as requested on August 31, 2016.

As the landlord's application has merit, the landlord is entitled to recover the filing fee of \$100.00 from the tenant pursuant to s. 65(1) of the *Act*.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply. The One Month Notice to End Tenancy for Cause dated June 15, 2016 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **August 31, 2016**. This Order must be served on the tenant. If the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

A copy of the landlord's decision will also be accompanied by a Monetary Order for **\$100.00** for the filing fee. The Order must be served on the tenant. Should the tenant fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that 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 *Manufactured Home Park Tenancy Act*.

Dated: August 18, 2016

Residential Tenancy Branch