



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application made October 11, 2016: CNC; O
Landlord's Application made October 12, 2016: OPC; FF

Introduction

This Hearing dealt with cross Applications for Dispute Resolution. The Tenant seeks to cancel a Notice to End Tenancy for Cause and "other" orders.

The Landlord seeks an Order of Possession and to recover the cost of the filing fee from the Tenant.

Both parties signed into the teleconference and gave affirmed testimony.

Issue(s) to be Decided

- Is the Notice to End Tenancy for Cause issued September 23, 2016 a valid notice to end the tenancy?

Background and Evidence

The Tenant testified that he mailed the Landlord his Notice of Hearing documents, by registered mail. The Tenant stated that he could not remember what date he mailed the documents and that he didn't have the receipt. The Tenant stated that he also mailed the Landlord copies of his documentary evidence.

The Landlord testified that he did not receive the Tenant's Notice of Hearing documents, which includes a copy of the Tenant's Application for Dispute Resolution. The Landlord stated that he received the Tenant's documentary evidence "on Thursday".

The Landlord testified that he mailed the Tenant his Notice of Hearing documents, by registered mail sent October 12, 2016. The Landlord provided a copy of the registered mail receipt and tracking number in evidence.

The Landlord testified that he mailed the Tenant the One Month Notice to End Tenancy for Cause, by registered mail, on September 23, 2016. The Landlord provided the tracking number for the registered mail.

The Landlord asked for an Order of Possession to be effective December 1, 2016.

Analysis

Rule 3 of the Rules of Procedure provides:

3.1 Documents that must be served with the hearing package

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Application for Dispute Resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC office with the Application for Dispute Resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*].

[reproduced as written]

Section 52(3) of the Act provides:

Starting proceedings

- 52** (3) A person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

[reproduced as written]

Time limits under the Act and Rules are provided to ensure procedural fairness. Contrary to the provisions of Rule 3.1 and Section 52(3) of the Act, I find that the Tenant did not provide sufficient evidence that he served the Landlord with the Notice of

Hearing package within 3 days after they were available. I find insufficient evidence that the Tenant served the Landlord with his Application at any time, if at all.

Therefore, the Tenant's application is **dismissed**.

Section 48 of the Act provides:

Order of possession for the landlord

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.

(2) A landlord may request an order of possession of a manufactured home site in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
- (c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the manufactured home site at the end of the fixed term;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a manufactured home site, and the order takes effect on the date specified in the order.

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 6 *[Resolving Disputes]*,

- (a) grant an order of possession to the landlord, and
- (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

I find that the tenancy ended on October 31, 2016, and the Tenant is overholding. Pursuant to the provisions of Section 48 of the Act, I find that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant; however, during the Hearing the Landlord requested the Order to be effective December 1, 2016.

I further find that the Landlord is entitled to recover the cost of the \$100.00 filing fee from the Tenant.

Conclusion

The Landlord is hereby provided with an Order of Possession **effective 1:00 p.m., December 1, 2016**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to the provisions of Section 65 of the Act, I hereby provide the Landlord with a Monetary Order in the amount of **\$100.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced 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: November 01, 2016

Residential Tenancy Branch