



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, MNR, MNDC, OLC, ERP, PSF, O (Tenant's First Application)
CNL, MNDC (Tenant's Second Application)
OPR, MNR (Landlord's Application)

Introduction

This hearing was convened by way of conference call in response to two Applications for Dispute Resolution (the "Application") made by the Tenant and an Application made by the Landlord. The Tenant applied on October 31, 2016 to dispute a notice to end tenancy for the Landlord's use of the property and for money owed or compensation for damage or loss under the *Manufactured Home Park Tenancy Act* (the "Act"), regulation or tenancy agreement. The Tenant filed a second Application on November 9, 2016 for the following reasons:

- to cancel a notice to end tenancy for unpaid rent;
- for the Landlord to make emergency repairs to the rental site;
- for the cost of emergency repairs to the rental site;
- for money owed or compensation for damage or loss under the *Manufactured Home Park Tenancy Act* (the "Act"), regulation or tenancy agreement;
- for the Landlord to comply with the Act, regulation or tenancy agreement;
- for the Landlord to provide services required by law; and
- for "Other" issues.

The Landlord made his Application on December 7, 2016 for an Order of Possession to end the tenancy for unpaid rent and for a Monetary Order for unpaid rent.

The Tenant, the Landlord, the Landlord's agent, and the Landlord's realtor appeared for the hearing. All testimony was taken under affirmation. No issues in relation to the service of the parties' Applications and their respective documentary evidence were raised during the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure sets out that in the course of the dispute resolution proceeding, the Arbitrator may use their discretion to dismiss unrelated claims contained in a single Application with or without leave to re-apply. As there were a multitude of issues before me to be dealt with in this hearing, I determined that I would only deal with the notices to end tenancy and the issue of whether the Landlord would be entitled to end the tenancy for unpaid rent. The Tenant was informed that the remaining aspects on his Application would be dismissed with leave to re-apply. The Tenant raised no objection to this and the hearing proceeded to determine the following issues.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided for the issues to be determined in this hearing.

Issue(s) to be Decided

- Is the Tenant entitled to cancel the notices to end tenancy?
- If not, then is the Landlord entitled to an Order of Possession to end the tenancy and a Monetary Order for unpaid rent?

Background and Evidence

The parties agreed that this tenancy with the Landlord for rental of the manufactured home site began ten years ago. The monthly pad rent is \$200.00 payable on the first day of each month.

The Landlord's agent confirmed that the Tenant was personally served with a 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park (the "12 Month Notice") on October 25, 2016. The 12 Month Notice was provided into evidence and shows and vacancy date of October 31, 2017.

The second page of the 12 Month Notice shows that the reason for ending the tenancy is because "The Landlord has all 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".

The Landlord's realtor testified that the site the Tenant occupied had been sold and the new owner of the site requires vacant possession of this. The Landlord referred to a document the Tenant had provided into evidence, which had been served to the Tenant,

titled "TENANT OCCUPIED PROPERTY – BUYERS NOTICE TO SELLER FOR VACANT POSSESSION". This document states in part: "All subjects have been removed, and I/we hereby request that you as landlord give the tenant(s) of the premises a notice under the *Residential Tenancy Act*, ending the tenancy and requiring the tenant(s) to vacate the premises by 1:00 PM November 1, 2017.

The Landlord's agent confirmed that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice") on November 6, 2016 by posting it to the Tenant's door. The Landlord provided a copy of the 10 Day Notice into evidence which details a vacancy date of November 19, 2016 due to unpaid rent for November 2016. The Landlord testified that the Tenant had also failed to pay rent for December 2016 and January 2017.

The Tenant confirmed personal receipt of the 12 Month Notice on October 25, 2016 and receipt of the 10 Day Notice on his door on November 6, 2016. The Tenant submitted that he disputed the 10 Day Notice as he had authority under the Act to withhold rent pursuant to a previous decision made by me on November 1, 2016. The file number for that hearing is detailed on the front page of this Decision and a copy of that decision was served to the Landlord in the Tenant's evidence package. The Tenant submitted that the 12 Month Notice was not served to him in good faith.

The Landlord's agent was unaware of the previous decision but was referred to it during the hearing in the Tenant's evidence package. The Landlord testified that he was not served with any documents or notice of the November 1, 2016 hearing and that a decision had been rendered allowing the Tenant authority to withhold rent.

The Landlord confirmed that he had not restored power to the rental site as he was waiting for the outcome of this Decision. The Landlord's agent stated the Landlord was seeking to end the tenancy pursuant to the 12 Month Notice as it was a valid notice under the Act. However, the Landlord's agent was pointed to the buyer's notice the Tenant was served with and that it pertained to a notice pursuant to the Residential Tenancy Act. No further submissions were made by the parties for the Landlord.

Analysis

I have examined the 10 Day Notice, and I find that the form and content complies with Section 45 of the Act. I also find that it was served to the Tenant in accordance with Act and that the Tenant disputed it within the five day time limit provided by Section 39(4) (b) of the Act

Section 20(1) of the Act states a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, **unless** the tenant has a right under this Act to deduct all or a portion of the rent.

On November 1, 2016 a hearing was held and conducted by me to determine a previous Application made by the Tenant. The Landlord failed to appear for the hearing despite the Tenant providing sufficient evidence that he had served the Landlord with notice of that hearing in accordance with the service provisions of the Act. In that hearing, I concluded the following:

“Section 58(1) (b) of the Act authorises me to make an order that a tenant may deduct an amount from rent to be expended on a service or facility not provided. After taking into account the impact on the Tenant, I order the Tenant to withhold full rent starting November 1, 2016 until such time the Tenant is provided with access to his utility account and the repairs to the electrical wiring and restoration of the meter have been undertaken.”

[Reproduced as written]

Therefore, pursuant to my previous Decision which was legal and binding on the parties, I find the Tenant had, and continues to have, legal authority to withhold rent until the Landlord complies with the instructions provided to him detailed in my Decision dated November 1, 2016. As a result, I cancel the 10 Day Notice dated November 6, 2016.

With respect to the 12 Month Notice, I make the following findings. Division 1, Part 5 of the Act details the ways in which a tenancy may end. In particular Section 42 of the Act provides a landlord the ability to end a tenancy for the landlord's use of the property.

However, the Act restricts the reason for ending the tenancy to a landlord having all the necessary permits and approvals required by law, and intending 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. The Act does not allow a landlord to end the tenancy if the rental site sells and is intended to be used by the buyer which is a reason for ending a tenancy under the Residential Tenancy Act and not the Manufactured Home Park Tenancy Act; this is the likely reason why the Tenant was served with the buyer's notice pursuant to the Residential Tenancy Act.

If the Landlord wants to end the tenancy of the Tenant for the Landlord's use of the property under the Manufactured Home Park Tenancy Act, the Landlord is required to

provide sufficient evidence that the Landlord or the new owner has the necessary permits and approvals to convert the manufactured home park to a non-residential use and this must be done in good faith. This evidence was not before me. Based on the foregoing, I find the 12 Month Notice has been used by the Landlord for a reason that is not authorised by the Act. Therefore, the 12 Month Notice dated October 25, 2016 is hereby cancelled.

The Landlord was cautioned during the hearing that irrespective of the outcome of this hearing, he is required to comply with my November 1, 2016 Decision which is still in effect and continues to apply. Therefore, the Landlord should refrain from serving the Tenant any further notices to end tenancy for unpaid rent and focus his attention on providing power to the rental site so that the tenancy can continue successfully.

The Landlord is cautioned that the Tenant has been given leave to re-apply for further losses and compensation which were not determined in the hearing of November 1, 2016 and in this hearing. Therefore, the Landlord should provide resolution to the Tenant immediately.

Conclusion

The Landlord's Application for an Order of Possession and his monetary claim for unpaid rent are dismissed without leave to re-apply. The Tenant's request to cancel the 10 Day Notice and the 12 Month Notice is granted. The tenancy will continue until it is ended in accordance with the Act. The Tenant's remaining issues on his Applications were dismissed with leave to re-apply. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 05, 2017

Residential Tenancy Branch