



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNLC, MNDC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 12 month Notice to End Tenancy dated January 5, 2017
- b. A monetary order in the sum of \$24,414

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent. HL appeared and testified he was the new owner. He does not have the authority to act on behalf of the respondent. On basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached.

I find that the 12 month Notice to End Tenancy was served on the Tenant on January 12, 2017.

The tenant testified he served the respondent by mailing, by registered mail to the address on the 12 month Notice. That address is the address of a real estate agent. The documents were returned to the applicant with a notation "moved." The applicant subsequently contacted the real estate agent and she gave the documents to the new owner. I determined there was sufficient service for the purpose of considering the application to cancel the 12 month notice as the real estate firm's address was on the Notice.. However, I determined there is insufficient evidence that I can conclude the respondent has been sufficiently served for the purpose of making a monetary claim.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 12 month Notice to End Tenancy dated January 5, 2017?
- b. Whether the tenant is entitled to a monetary order and if so how much?

Background and Evidence

The tenancy began 10 years ago. There is an ongoing dispute between the applicant and the respondent. The rent is \$200 per month. However, there is an order from a previous arbitrator that provides the tenant does not have to pay the rent until the power was restored. The tenant testified the respondent tampered with the power to force him to leave and he ignored the order of the previous arbitrator. He further testified the he had the BC Hydro official come in and the power has been restored.

HL testified her purchased the property and took possession as of January 13, 2017. HL has provided the applicant with a cheque in the sum of \$2400 which was for equivalent of 12 months rent.

Grounds for Termination for the 12 month Notice to End Tenancy::

The 12 month Notice to End Tenancy relies on section 42 of the Manufactured Home Park Tenancy Act. That section provides as follows:

- 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.

Analysis:

I determined there was sufficient service for the purpose of considering the Tenant's application to cancel the 12 month Notice to End Tenancy dated January 5, 2017. The tenant stated that he was requesting an order to cancel the 12 month Notice to End even though it meant returning the cheque for the equivalent of 12 months rent.

I ordered that the 12 month Notice to End Tenancy dated January 5, 2017 be cancelled. The new owner is uncertain as to exactly what purpose he intends to use the property. There are some plans to build a motel on the property but that has not been finalized. The new owner did not provide sufficient evidence to prove that all of the necessary permits and approvals required by law have been obtained. The new owner retains the right to serve a new 12 month Notice in the future if he is unable to make an agreement with the tenant and after he has complied with the requirements of the Act. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the 12 month Notice has been cancelled the Tenant is obliged to return to the new owner the cheque for the equivalent of 12 months rent.

The Act provides that where a party is making a monetary claim the claim can be served in person, by registered mail to where the other party resides or carries on business or by service on the agent. Service by registered mail creates a rebuttable presumption of service. In this case the Tenant was unable to personally serve the landlord. He attempted to serve by registered mail to the address on the Notice but it was returned with a notation "moved.". The address on the Notice to End Tenancy was the address of the real estate company. It is not the address of where the landlord resides or carries on business. While the address of the real estate firm was sufficient for an application to cancel the Notice to End Tenancy as they were acting for the respondent with respect to that issue, I am not satisfied they had the authority to act for the respondent for the purpose of accepting service of a monetary claim.

As a result I dismissed the application for a monetary order with leave to re-apply as I am not satisfied the respondent had notice of this hearing.

Conclusion::

In conclusion I ordered that the 12 month Notice to End Tenancy be cancelled. I further ordered that the application for a monetary order be dismissed with liberty 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 *Manufactured Home Park Tenancy Act*.

Dated: February 10, 2017

Residential Tenancy Branch