



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, O & FF

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for cause
- b. An order that the Tenant comply with the Park Rules

The Application for Dispute Resolution filed by the Tenant seeks an order prohibiting the landlord from forcing him to remove a shed and fence.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on April 27, 2017. The Tenant acknowledged receipt of the Notice on that date. I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was served on the landlord by mailing, by registered mail on May 12, 2017. I find that the Application for Dispute Resolution and Amended Application for Dispute Resolution filed by the landlord was served on the Tenant by posting. The Tenant acknowledged receipt of these documents.

On May 23, 2017 the Residential Tenancy Branch Registry received some documents from the Tenant. One of the documents was the second page of Tenant's Application for Dispute Resolution with a notation on the top stating amendment and indicating the Tenant was seeking an order to cancel the Notice to End Tenancy for cause. The tenant failed to use the form required by the Rules of Procedure to amend his application. .

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated April 27, 2017.
- b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?
- c. Whether the landlord is entitled to an Order for Possession?

Background and Evidence

The tenant moved into the manufactured home park in 1981. The landlord purchased the manufactured home park in 2005. There are 15 manufactured home pads. The landlord testified 13 of those pads are rented to tenants who own manufactured homes. Two of the pads including the tenant's are rented to tenant who own a recreational vehicle.

The rent is \$334.10 per month payable in advance on the first day of each month.

The one month Notice to End Tenancy dated April 27, 2017 incorrectly stated the end of tenancy date was April 27, 2017. However, the section 46 of the Act corrects and the effective end of tenancy date so that it is in accordance with the Act. The end of tenancy date of the Notice is corrected to May 31, 2017.

Incorrect effective dates automatically changed

46 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Tenant's Application:

The Manufactured Home Park Tenancy Act provides that where a Tenant is served with a one month Notice to End Tenancy, the Tenant has 10 days in which to file an Application for Dispute Resolution seeking an order to cancel the 10 day Notice. In this case the tenant filed an application within the 10 day period but the Application did not seek an order to cancel the one month Notice. The Act further provides:

40(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.

On May 23, 2017 the Residential Tenancy Branch Registry received a document that had the notation “amendment” on it that purported to apply to cancel the one month Notice to End Tenancy.

Section 4.1 of the Rules of Procedure provides as follows:

4.1 Amending an Application for Dispute Resolution

An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC office.

An amendment may add to, alter or remove claims made in the original application.

As stated in Rule 2.3 [*Related issues*], unrelated claims contained in an application may be dismissed with or without leave to reapply.

See also Rule 3 [*Serving the application and submitting and exchanging*

Policy Guideline #23 (Amending an Application for Dispute Resolution) includes the following:

B. SEQUENCE OF EVENTS

The following sequence of events must be followed in amending an application for dispute resolution:

1. the applicant completes an Amendment to an Application for Dispute Resolution (form RTB-42);
2. the applicant submits this form and a copy of all supporting evidence to the Residential Tenancy Branch directly or through a Service BC office to allow service upon each other party as soon as possible, and in any event to each other party not less than 14 days before the date of the hearing;
3. the Residential Tenancy Branch or Service BC accepts the Amendment to an Application for Dispute Resolution form submitted in accordance with the Rules of Procedure;
4. the applicant serves each respondent with a copy of the Amendment to an Application for Dispute Resolution form with all supporting evidence as soon as possible, and in any event, so that it is received not less than 14 days before the date of the hearing; and
5. the arbitrator, at the hearing, considers whether the principles of administrative fairness have been met through the amendment submission process and whether any

party would be prejudiced by accepting the amendment(s), determines whether to accept the amendment(s) and records the determination in a written decision. A party must be prepared to provide proof of service of the Amendment to an Application for Dispute Resolution and supporting evidence for each respondent.

I determined the Tenant failed to amend his Application for Dispute Resolution to include a claim to cancel the one month Notice to End Tenancy.

Section 4.2 of the Rules of Procedure provides that an arbitrator the authority to amend an Application for Dispute Resolution at the hearing in certain limited circumstances. The Rule provides.

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

This is not a situation where it is a circumstance that could not reasonably be anticipated. Further it does not provide the arbitrator with the authority to amend the Application for Dispute Resolution retroactively. Even if I determined the tenant's application could be amended at the hearing on June 20, 2017, it would be too late for the tenant to apply to cancel the Notice to End Tenancy as the effective date on the Notice is May 31, 2017. Section 66(3) provides that an arbitrator must not extend the time limit to make an application to dispute a Notice to End Tenancy beyond the effective date of the Notice. .

Director's orders: changing time limits

66 (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

I determined the Tenant failed to sufficiently apply to cancel the one month Notice to End Tenancy and as a result there is no basis for an order to cancel the one month Notice to End Tenancy.

Further, even if I determined the amendment of May 23, 2017 was in a sufficient form, the Tenant failed to apply to cancel the Notice within the 10 days required and he is conclusively deemed to have accepted the end of the tenancy. The Act permits an arbitrator to extend a time limit only in exceptional circumstances. Section 59 provides as follows:

Director's orders: changing time limits

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]*.

...

(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Policy Guideline #36 includes the following:

“Exceptional Circumstances

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.

The tenant was asked to provide evidence as to exceptional circumstance that might exist for the delay in filing his application. He testified he thought he was doing according to the dates. However, the requirement of filing within 10 days is on the one month Notice to End Tenancy.

An arbitrator must apply the Act, Regulations and Rules of Procedure including procedural rules. He/she cannot ignore requirement under the legislation. This is not an exceptional circumstance. While one can empathize with the tenant's situation given this is a recreational vehicle, an arbitrator is not permitted to consider irrelevant factors. The failure to read the Notice which clearly sets out the requirement of applying within the 10 day period is not an exceptional circumstance.

Given the above conclusion I determined the law requires that I grant an Order of Possession. Further It is not necessary nor appropriate to consider the evidence on the merits.

Tenant's Application:

The Application for Dispute Resolution filed by the Tenant on May 5, 2017 sought an order that the landlord be prohibited from forcing the tenant to remove a shed and fence. This is moot as the tenancy is coming to an end. This claim is dismissed.

The tenant subsequently filed on May 11, 2017 claiming damages caused by a tree remover contracted by the Landlord on November 3, 2015 and sewer overpayment. He failed to use the proper form. Further, the tenant stated he was withdrawing this claim.

The Tenant filed a document on May 23, 2017 that purported to amend the Application for Dispute Resolution. The tenant failed to use the proper form. For the reasons set out above this claim is dismissed.

Landlord's Claim - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The landlord served a one month Notice to End Tenancy on April 27, 2017. The Tenant(s) has not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession. The rent for June was paid and accepted on a "use and occupation only." I set the effective date of the Order of Possession for June 30, 2017.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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 22, 2017

Residential Tenancy Branch