



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding ED'S MOBILE HOME PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") filed by the Tenants under the *Manufactured Home Park Tenancy Act* (the "Act"), seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice").

I note that Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant B.W. (the "Tenant"), and the Landlord; both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") state that the respondent must be served with a copy of the Application and Notice of Hearing and I confirmed service of the documents as explained below.

The Tenant testified in the hearing that the Application and the Notice of Hearing were personally served on the Landlord on or about August 25, 2017, and the Agent confirmed receipt of these documents on or about that date. As a result, I find that the Agent was personally served on August 25, 2017.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

At the outset of the hearing I advised the Landlord that their evidence package, which was received at the residential Tenancy Branch (the "Branch") on September 15, 2017, was late. I asked the Tenant if they had received the documents from the Landlord and had time to consider them in preparation for the

hearing, and they advised me that they had. As a result of the above, and with the consent of the parties, the evidence from the Landlord was accepted for consideration in the hearing.

During the hearing it became apparent that three separate notices to end tenancy had been issued by the Landlord to the Tenants, and both parties provided substantial testimony related to all three notices. The first was a 10 Day Notice dated July 31, 2017. The second was a One Month Notice to End Tenancy for Cause (the "1 Month Notice") dated August 14, 2017. The third was a 10 Day Notice dated August 18, 2017.

Upon review of the Application for Dispute Resolution the documentary submissions before me, I find that the One Month Notice dated August 14, 2017, is not the subject of this dispute hearing as the Tenants only applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. In addition, I note that it was the Landlord who submitted the copy of the One Month Notice and not the tenants.

I also find that the 10 Day Notice dated July 31, 2017, is not the subject of this dispute as the Tenants only submitted a copy of the 10 Day Notice Dated August 18, 2017, with their Application. Again, it was the Landlord who submitted this 10 Day Notice.

In any event, the parties agreed during the hearing that the amount of outstanding rent owed for July 2017, had been paid. As the Tenant applied to cancel a 10 Day notice dated August 18, 2017 with the Application, I find that this is the notice to end tenancy which is the subject of the Application. Based on the above, I have only considered testimony and evidence in relation to the 10 Day Notice dated August 18, 2017, in my decision. I have made no findings of fact or law in relation to either the 10 day Notice dated July 31, 2017, or the 1 Month Notice dated August 14, 2017.

Issues to be Decided

Is there a valid reason to cancel the 10 Day Notice under the Act?

If the Tenant is unsuccessful in seeking to cancel the 1 Month Notice, is the landlord entitled to an order of possession pursuant to Section 55(1) of the Act?

Background and Evidence

In the hearing the Agent testified that the tenancy, which began on January 18, 2017, is a month to month tenancy, and that pad rent in the amount of \$413.00 is due on the first day of each month. The parties agreed that these are the correct terms of the tenancy agreement. A copy of the tenancy agreement was also submitted into the documentary evidence before me; however, the two page addendum which forms part of the tenancy agreement, was not.

In the hearing the Landlord testified that the rent cheque received from the Tenants for August 2017, was returned as NSF, and that as a result, a 10 Day Notice was issued. A copy of the returned cheque was also before me for consideration.

The 10 Day Notice, dated August 18, 2017, indicates that the Tenants failed to pay rent in the amount of \$413.00 that was due on August 1, 2017. The 10 Day Notice has an effective vacancy date of August 28, 2017 and also lists a \$45.00 NSF charge. The Agent testified in the hearing that the 10 Day Notice was

personally served on the Tenants on August 18, 2017, and the Tenant acknowledged receipt of the 10 Day Notice on this date. The 10 Day Notice also stated that the Tenants had five days to pay the rent or dispute the notice, or the tenancy would end.

In the hearing the Tenant testified that when they received the 10 Day Notice, they attended the bank and obtained a bank draft in the amount of \$458.00, a copy of which is before me for consideration. The Tenant stated that the draft covered the amount of outstanding rent plus the \$45.00, NSF charge and that they attempted to pay the rent using the bank draft on August 18, 2017, however, the Agent would not accept it. In the Hearing the Agent confirmed that the Tenant attempted to pay the rent via bank draft on August 18, 2017, however, it was not accepted as the Landlord wanted a cash payment due to the recent NSF cheque.

The Agent testified that the Tenant was advised to return and pay the rent in cash; however, the Tenant denies being provided with this information. In any event, the Tenant testified that they are elderly and do not feel comfortable carrying that much cash, which is why they got a bank draft. Further to this, the Tenant testified that they have tried on several other occasions to pay the rent using the bank draft and that again it was refused.

Analysis

Section 46 (1) of the Act outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the Act also state:

46 (4) Within 5 days after receiving a notice under this section, the tenant may
(a) pay the overdue rent, in which case the notice has no effect, or
(b) Dispute the notice by making an Application for Dispute Resolution.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the Act, I find that the Tenants were served with the 10 Day Notice on August 18, 2017, the day it was personally served on them. I also find that the Tenants were obligated to pay the monthly rent of \$413.00, on time and in full each month.

Both parties agreed in the hearing that the Tenants attempted to pay rent in full via bank draft within five days of receiving the 10 Day Notice. Both parties also agreed that the rent was refused by the Agent. As a result, I find that the Tenants attempted to pay the rent as required within the five days provided for under section 46(4) of the Act.

Further to this, I do not find it reasonable for the Agent or the Landlord to have refused the rent in the manner the Tenant attempted to pay it. The bank draft secured by the Tenant was a pre-paid cashable

document in the name of the Landlord and covered the entire outstanding rent amount noted on the 10 Day Notice, plus the \$45.00 NSF fee sought by the Landlord.

As the bank draft was pre-paid in full by the Tenants, I find that there was no risk to the Agent or Landlord in accepting it, as it would not have been possible for the funds to be declined by the bank. Further to this, I do not find it reasonable for the Agent to refuse the bank draft and require cash, as the Tenant could not return the funds to the bank in exchange for cash as the bank draft was produced naming the Landlord as payee.

Based on the above, I find that the Tenants attempted to pay the outstanding rent listed on the 10 Day Notice within the time frame allowed under section 46(4) of the Act and that it was unreasonable for the Agent or the Landlord to refuse such payment. As a result, I Order that the 10 Day Notice dated August 18, 2017, be cancelled as it is of no force or effect.

If the rent for the month of August remains unpaid the landlord may issue a new 10 Day Notice to End Tenancy for Unpaid Rent to end the tenancy. However, I caution the landlord that should the tenants attempt to pay any rental arrears using a bank draft any new 10 Day Notice to End Tenancy for Unpaid Rent may not be found to be enforceable.

Conclusion

I order that the 10 Day Notice dated August 18, 2017, be cancelled and that tenancy continue in full force and effect unless and until it is cancelled in accordance with the Act.

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: October 3, 2017

Residential Tenancy Branch