



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on October 27, 2017. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act*:

- to cancel a Notice to End Tenancy for Cause; and,
- to recover the filing fee for the cost of this application.

Both parties attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

During the hearing, both parties agreed that the Tenants rent a manufactured home site within the Landlord's manufactured home park. Given this, I amend the Tenants' application to be filed under the *Manufactured Home Park Tenancy Act* (the *Act*), rather than under the *Residential Tenancy Act*, as she had selected on the application form.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 48 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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. I must also consider whether the landlord has issued a notice to end tenancy that is compliant with Section 45 of the *Act*.

The Landlord indicated in her written evidence that the property is located on First Nations land and that the *Act* does not apply. However, during the hearing, the Landlord expressed that she did not have any documentation to support this, nor did she wish to pursue this claim. Subsequently, she withdrew this argument from her evidence, and asked to proceed with the hearing. Further, the lease agreement provided into evidence indicates that the manufactured home park is owned and operated by an individual named E.C, in Sardis, BC. I find there is insufficient documentary evidence to show that this property is First Nations land. Based on the evidence before me, I am satisfied that I have jurisdiction to conduct this hearing, and render a decision on this matter.

Issues to be Decided

- Is the tenant entitled to have the landlord's Notice to End Tenancy for Cause cancelled?
 - If not, is the landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the cost of the filing fee?

Background, Evidence, and Analysis

I accepted testimony from both parties regarding this Application. However, I find that the Notice to End Tenancy for Cause is not valid as it does not comply with section 45 of the *Act*. I also find that this cannot be amended under section 61 of the *Act*.

45 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 38 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) **when given by a landlord, be in the approved form.**

[My emphasis added]

I note the Landlord did not use the standard 1-Month Notice for Cause form provided by the Residential Tenancy Branch. I find the Notice provided by the Landlord, dated May 30, 2017, is not in the approved form. It does not contain pertinent information regarding

the Tenant's rights and obligations under the *Act*, which is typically contained on page two of the standard form.

Given the above, I find that the Landlord issued a Notice that was invalid. Therefore, I cancel the Notice dated May 30, 2017. I order the tenancy to continue until ended in accordance with the *Act*.

Further, section 65 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I order that the Landlord repay the \$100.00 fee the Tenants paid to make the application for dispute resolution. I authorize the Tenants to reduce a future rent payment by \$100.00 in order to compensate her for the filing fee.

Conclusion

The Notice issued by the landlord dated May 30, 2017, has been cancelled. The tenancy has been ordered to continue until ended 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 30, 2017

Residential Tenancy Branch