



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, OPC

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Manufactured Home Park Tenancy Act* (the *Act*). The landlords applied for an Order of Possession for cause pursuant to section 48 of the *Act*. The tenant applied for:

- more time to make an application to cancel the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 59; and
- cancellation of the landlords' 1 Month Notice pursuant to section 40 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlords' daughter (the landlord) acted as the agent for the landlords. She explained that her father was hospitalized shortly after the 1 Month Notice was issued and has passed away recently.

The tenant confirmed that on August 2, 2017, he received the landlords' 1 Month Notice sent to him by registered mail on July 27, 2017. In accordance with section 81 of the *Act*, I find that the tenant was duly served with the 1 Month Notice on August 2, 2017.

The tenant testified that he sent the landlords a copy of his dispute resolution hearing package by registered mail on August 22, 2017. He provided the Canada Post Tracking Number and gave undisputed sworn testimony that his hearing package and evidence were returned to him by Canada Post as undelivered. He testified that he sent this package to the mailing address cited in the landlords' 1 Month Notice. The landlords' daughter did not know that the tenant had applied for dispute resolution, explaining that this was a very stressful time for her and her family. Pursuant to sections 81, 82 and 83 of the *Act*, I find that the landlords were deemed served with the tenant's dispute resolution hearing package and written evidence on August 27, 2017, the fifth day after their registered mailing.

As the tenant confirmed that he was handed a copy of the landlords' dispute resolution hearing and evidence packages on or about September 26, 2017, I find that the tenant was duly served with these documents in accordance with sections 81 and 82 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to an extension of time to apply to cancel the 1 Month Notice?
If so, should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Background and Evidence

This rental of a manufactured home pad site commenced in November 2008. Although no written tenancy agreement was completed, the parties agreed that the tenant was responsible for paying monthly rent of \$250.00, payable in advance on the first of each month.

The landlords entered into written evidence a copy of their August 2, 2017 1 Month Notice. In that Notice, requiring the tenant to end this tenancy by August 31, 2017, the landlords cited the following reasons for the issuance of the Notice:

Tenant is repeatedly late paying rent.

As the effective date identified in the landlords' 1 Month Notice was incorrect, this date automatically corrects to September 30, 2017, the first date when a 1 Month Notice deemed served on August 2, 2017 could have taken effect.

The tenant applied for dispute resolution on August 21, 2017, well after the expiration of the ten-day period for applying to cancel the landlords' 1 Month Notice. At the hearing, the tenant's only explanation as to why he needed an extension of time to seek cancellation of the 1 Month Notice was that he was busy working during that period. I advised the parties that it was unlikely that I would be granting an extension of time to the tenant to apply to cancel the 1 Month Notice.

At the hearing, the landlord gave undisputed sworn testimony that the tenant had a long history of late payment of his monthly pad rent. The tenant confirmed that he often ended up paying his rent on an annual basis, frequently near or at the end of the year. He confirmed that rent was due on a monthly basis much earlier than when he actually made his payments.

Analysis

Pursuant to section 56 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to a final and binding resolution of the issues currently before me and arising from these applications under the following terms:

1. The parties agreed that this tenancy will end at 1:00 p.m. on February 28, 2018, by which time the tenant will have vacated the rental unit.
2. Both parties agreed that this resolution constituted a final and binding resolution of all issues in dispute arising out of their applications, and that they entered into this settlement agreement of their own free will and volition.

Conclusion

To give legal effect to the settlement agreement entered into by the parties, I issue the attached Order of Possession to take effect by 1:00 p.m. on February 28, 2018 to be used by the landlord(s) if the tenant does not vacate the rental premises in accordance with their agreement. The landlords are provided with these Orders in the above terms and the tenant must be served with an Order in the event that the tenant does not vacate the premises by the time and date set out in their agreement. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Between now and the end of this tenancy, the tenant is responsible for making monthly payments to the landlord(s) in accordance with their oral tenancy agreement, which the landlord agreed to accept for use and occupancy only and not to reinstate the tenancy.

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: November 09, 2017

Residential Tenancy Branch