



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE, MNDC

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause; orders for the landlord to comply with the Act, regulations or tenancy agreement; orders to suspend or set conditions on the landlord's right to enter the rental site; and, monetary compensation for damages or loss under the Act, regulations or tenancy agreement.

Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The parties provided consistent evidence that on October 2, 2017 the landlord served the tenant with three Notices to End Tenancy: a 1 Month Notice to End Tenancy for Cause and two 10 Day Notices to End Tenancy for Unpaid Rent with respect to unpaid rent for the month of August 2017 and September 2017.

On October 6, 2017 the tenant filed an Application for Dispute Resolution to dispute the 1 Month Notice; however, there was a delay in processing the tenant's Application for Dispute Resolution and the hearing package was not generated until October 25, 2017. The tenant served the hearing package upon the landlord on October 28, 2017 or October 29, 2017.

On October 25, 2017 the landlord applied for an Order of Possession and Monetary Order for unpaid rent under the Direct Request procedure and on November 6, 2017 an Adjudicator granted the landlord's requests. Having been satisfied the tenant failed to pay rent; the landlord served the tenant with 10 Day Notice(s) to End Tenancy for Unpaid Rent; and, the tenant did not file to dispute the 10 Day Notice(s) or pay the outstanding rent, the Adjudicator granted the landlord's request for an Order of

Possession. The Adjudicator dismissed the landlord's request for a Monetary Order with leave to reapply. On November 9, 2017 the tenant filed an Application for Review consideration with respect to that decision and Order. In the tenant's Application for Review, the tenant indicates that a hearing was scheduled and referred to this case.

I noted that in the Application for Dispute Resolution before me indicates the tenant was disputing a 1 Month Notice to End tenancy for Cause but not a 10 Day Notice. The tenant stated that he was "advised" or the "given the impression" by the Service BC clerk that the tenant need not dispute the 10 Day Notices and that all three eviction notices would be dealt with during this hearing.

Had the 10 Day Notices been disputed by the tenant, the tenant's position was that the landlord cashed three rent cheques at the same time in September 2017 (for the months of July, August and September 2017) which resulted in two of the cheques being dishonoured for insufficient funds; the landlord did not inform the tenant of this before issuing the 10 day Notices; and, the landlord did not accept the tenant's rent payment that he had available in cash. Where a tenant is in receipt of a 10 Day Notice the tenant must be prepared to establish that rent was paid, or attempts to satisfy the rent were made but refused by the landlord, the tenant had a legal right to withhold rent, or that the 10 Day Notice is otherwise invalid. Where a tenant provides a landlord with post-dated cheques, it is upon the tenant to ensure that the money is available in their bank account and manage their chequing account accordingly and should take into account that cheques are negotiable for up to six months after the issue date. Further, the Act does not require that a landlord must first give the tenant a warning before issuing a 10 Day Notice. As for the tenant's attempt to pay rent, the tenant stated that he had \$360.00 available for the landlord on October 2, 2017 as rent for the month of October 2017. The landlord stated he understood the tenant had a payment for the October 2017 rent did he not accept it since he did not want to reinstate the tenancy.

Considering the tenant acknowledged that his rent cheques were dishonoured; he was served 10 Day Notices on October 2, 2017; and, he did not present the landlord with sufficient payment to satisfy the rental arrears within five days of receiving the 10 Day Notices, I informed the tenant that he did not establish a basis for cancelling the 10 Day Notices even if he had disputed the 10 Day Notices. Both parties indicated that they did not want to continue this tenancy much longer and I suggested the parties turn their minds to finding a way to resolve their dispute by mutual agreement. Discussion ensued and I was able to facilitate a mutual agreement between the parties. The mutual agreement is recorded by way of this agreement and the Orders that accompany it.

Issue(s) to be Decided

What are the terms of the mutual agreement?

Background and Evidence

The parties mutually agreed upon the following terms during the hearing:

1. The tenant shall pay the landlord the sum of \$1,900.00 on or before December 1, 2017 by depositing a cheque or money order in the landlord's mail slot at the property. The tenant shall also provide the landlord with post-dated rent cheques for the months of January 2018 through May 2018.
2. Should the tenant fail to comply with term number 1 above, the landlord may serve and enforce the two-day Order of Possession that I provide to the landlord with this decision.
3. The tenancy shall end no later than June 1, 2018 and the landlord is provided an Order of Possession that is effective on June 1, 2018.
4. It is expected that the tenant will attempt to sell his manufactured home before June 1, 2018 and new tenants are subject to approval by the landlord. Accordingly, the tenant is at liberty to end the tenancy before June 1, 2018 should a buyer and approved tenant be secured.
5. The decision and Order issued on November 6, 2017 are set aside and replaced by this decision and the Orders that I provide with this decision. The tenant's Application for Review Consideration is also withdrawn.

Analysis

Pursuant to section 56 of the Act, I have the authority to assist parties in reaching a settlement during the hearing and to record the agreement in the form of a decision or order.

I have accepted and recorded the mutual agreement reached by the parties during this hearing and I make the terms an Order to be binding upon both parties.

In recognition of the mutual agreement, I provide the landlord with a Monetary Order in the amount of \$1,900.00 that the landlord may serve and enforce upon the tenant in the event the tenant fails to pay this amount on or before December 1, 2017.

I also provide the landlord with two Orders of possession, as follows:

- An Order of Possession effective two days after service upon the tenant that the landlord may serve and enforce *if* the tenant fails to pay \$1,900.00 by December 1, 2017 or fails pay rent by way of the post-dated cheques for the months of January 2018 through May 2018.
- An Order of Possession effective June 1, 2018 that may be served upon the tenant at any time.

The decision and Order issued to the landlord on November 6, 2017 are set aside and no longer of any force or effect. The tenant's Application for Review Consideration is also considered withdrawn.

Conclusion

The parties reached a mutual agreement during the hearing that I have recorded by way of this decision and the Orders that accompany it.

The decision and Order provided to the landlord on November 6, 2017 are set aside and are replaced with this decision and the Orders that I provide with this decision.

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 14, 2017

Residential Tenancy Branch