



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes: CNR, ERP, OLC, RP

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel a 10 day Notice to End Tenancy dated December 14, 2017
- b. An order for emergency repairs.
- c. An order that the landlord comply with the Act, regulations and/or tenancy agreement.
- d. A repair order

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on December 14, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlords on or before December 17, 2017. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling a 10 day Notice to End Tenancy dated December 14, 2017?
- b. Whether the tenant is entitled to an order for emergency repairs?
- c. Whether the Tenant is entitled to an order that the landlord comply with the Act, regulations and/or tenancy agreement?
- d. Whether the tenant is entitled to an order for repairs?

Background and Evidence:

This involves the rental of a manufactured home site. The respondents sold a manufactured home/trailer to the tenant in 2008. The tenancy began on May 15, 2008 when the parties entered into a month to month tenancy agreement. The tenancy agreement provided that the tenant(s) would pay rent of \$250 per month payable in advance on the first day of each month. The rent has been increased to \$260 per month commencing January 1, 2018. .

The tenant testified that he paid the arrears on December 21, 2017. The receipt indicates it was accepted by the landlord unconditionally. He also testified his rent has been to March 1, 2018.

Analysis:

Where a tenant has been served with a 10 day Notice to End Tenancy he/she has 5 days in which to pay the arrears in which case the 5 days the Notice is void. If the tenant pays the rent after that time the landlord(s) have an election to make. They can accept the payment for "use and occupation only" or they can reinstate the tenancy. If they accept it for "use and occupation only" the tenants would have to vacate at the end of the rental payment period.

In the case before me the tenant failed to pay arrears within 5 days of being served. Thus the landlord(s) had an election to make. The rent receipt indicates it was accepted unconditionally. In the absence of evidence from the landlord to the contrary I determined the landlord(s) failed to advise the tenants they were accepting the payment "for use and occupation only" and have thus reinstated the tenancy.

As a result I ordered that the 10 day Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations remaining unchanged.

Application for a Repair Order & Emergency Repairs:

The tenant seeks a repair order and an order for emergency repairs that the landlord repair the faulty electrical in his manufactured home. The manufactured home was sold to the tenant in 2008. I determined, this is not a matter that can be heard under the Manufactured Home Park Tenancy Act as the Tenant is renting a manufactured home pad.

The tenant previously applied for an order for emergency repairs and repairs relating to the condition of the electrical system. The arbitrator in that hearing which was handed down on August 8, 2017 dismissed the claim for the following reasons:

"Is the tenant entitled to an order for emergency repair or reduced rent?"

Under the Act, the tenant leases a manufactured home site from the landlords. Once he purchased the manufactured home from the landlords, he became responsible for it as its owner. Any remedy he may or may not have against the landlords for the condition of the manufactured home when he bought it is not covered by the Act."

I agree with the analysis of that decision. Further the principle of res judicata would apply which provides that a party cannot bring a claim that has previously been fully litigated. As a result I dismissed the tenant's application for repairs and emergency repairs.

The tenant failed to provide sufficient evidence to prove the landlord has failed to comply with the Act, regulations and/or tenancy agreement. As a result that claim is dismissed.

Conclusion

I ordered that the 10 day Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I dismissed the tenants claim for emergency repairs, repairs and an order that the landlord comply with the Act, regulations and/or tenancy agreement.

This decision is final and binding on both parties.

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*, SBC 2002, c.. 77.

Dated: February 22, 2018

Residential Tenancy Branch