



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MT CNR FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* ("the Act") for: cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 39; and authorization to recover the filing fee for this application from the landlords pursuant to section 65. The tenant originally sought more time to make her application however I find that she has made her application within the appropriate timeline and therefore, the tenant withdrew this portion of her application.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlords confirmed receipt of the tenant's Application for Dispute Resolution and the tenant confirmed receipt of the landlords' documentary evidence and

Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on September 1, 2015 as a month to month tenancy with a rental amount of \$650.00 payable on the 1st of each month. The tenant continues to reside in the rental unit. The landlords continues to hold a \$200.00 security deposit paid at the outset of the tenancy.

The landlords sought an Order of Possession if the tenant is unsuccessful in her application. The landlord representatives testified that the tenant did not pay rent on January 1, 2018. The landlord representatives testified that the tenant did not pay the rent after the issuance to the tenant of a 10 Day Notice to End Tenancy on January 5, 2018.

The tenant did not dispute that she did not pay rent on January 1, 2018. She testified that the landlords' office was not open and therefore she was unable to pay the rent on January 1, 2018. The tenant testified that, after January 1, 2018, she was unable to pay rent because she was sick and she couldn't make it to the landlords' office. The tenant testified that she has two phone

numbers for the landlords but did not call them. The tenant testified that she took herself to the hospital on January 5, 2018 but she did not stay – she was too sick.

The tenant testified that she paid her January 2018 rent as well as her February 2018 rent on January 26, 2018. The landlord representatives testified that the tenant had not paid rent for March 2018 however the tenant testified that she had put the March 2018 rent in the registered mail the day of this hearing.

The landlord representatives testified that the tenant is always late in her rent recently and really can't afford to continue living in the rental unit. The landlord representatives testified that they even spoke to the tenant in 2017 about various ways, including a move to a different unit that would accommodate the tenant.

Analysis

When a tenant applies to cancel a Notice to End Tenancy, the burden shifts to the landlord to justify the notice to end tenancy. In this case, the landlord provided undisputed evidence that the tenant did not pay rent in accordance with the Act and that the Notice to End Tenancy issued for unpaid rent was justified. At this hearing, the tenant did not dispute that she failed to pay the unpaid January 2018 rent on January 1, 2018. The tenant did not dispute that she failed to pay the outstanding January 2018 within five days of receiving the 10 Day Notice to End Tenancy. The tenant provided testimony that she paid January 2018 rent on January 26, 2018.

Section 20(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” Based on all of the evidence before me from both parties and all representatives at this hearing, I find that the tenant did not pay rent in accordance with her obligation pursuant to section 20 of the Act.

The tenant did not pay January 2018 rent in time to void the 10 Day Notice to End Tenancy for Unpaid Rent served to her. The tenant did not provide sufficient evidence to support her application to cancel the 10 Day Notice. In accordance with section 39 of the *Act*, this tenancy ended on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 15, 2018. As that has not occurred, in accordance with section 48(1) of the Act reproduced below, I find that the landlords are entitled to a 2 day Order of Possession.

48 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if

(a) the landlord's notice to end tenancy complies with section 45 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the tenant has not been successful in her application to cancel the notice to end tenancy, the tenant is not entitled to recover her filing fee.

Conclusion

I dismiss the tenant's application in its entirety.

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

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: March 14, 2018

Residential Tenancy Branch