



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, LRE

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Manufactured Home Park Tenancy Act* (the *Act*) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) and to suspend or restrict the Landlord’s right to enter the manufactured home site.

Three agents for the Landlord (the “Landlord”) were present for the duration of the teleconference hearing as was the Tenant. All parties were affirmed to be truthful in their testimony.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding (the “Notice of Hearing”) from the Tenant as well as a package of the Tenant’s evidence. The Landlord testified that they received the Tenant’s evidence approximately eight days prior to the hearing and the evidence was submitted to the Residential Tenancy Branch six days before the hearing.

In accordance with rule 3.14 of the Rules of Procedure, the applicant must serve a copy of their evidence to the respondent not less than 14 days before a hearing. As the Landlord confirmed receipt of the evidence and that they had time to review the evidence prior to the hearing, the Tenant’s evidence will be considered in accordance with rule 3.17 of the Rules of Procedure. The Landlord confirmed during the hearing that they were satisfied with moving forward with the hearing, despite the short timeframe provided for review of the Tenant’s evidence.

The Tenant confirmed that she received a copy of the Landlord’s evidence package.

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.

Preliminary Matters

Subject to Section 57(3) of the *Act*, an application may be amended by the director. As it was noticed after the hearing that an individual agent for the Landlord was named as the respondent

instead of the business name of the Manufactured Home Park, the application was amended to the business name that was stated as the Landlord on the 10 Day Notice. The person originally named as the respondent attended the hearing as an agent for the Landlord.

The Tenant applied to dispute a 10 Day Notice as well as to suspend or restrict the Landlord's right to enter the manufactured home site. However, as I find that these claims are unrelated and in accordance with rule 2.3 of the Rules of Procedure, I dismiss the Tenant's application to suspend or restrict the Landlord's right to enter, with leave to reapply.

This decision will deal only with the 10 Day Notice that is in dispute. The parties were advised during the hearing that only the application to cancel the 10 Day Notice would be considered and that the other claim on the application was being dismissed.

Issue to be Decided

Should the 10 Day Notice to End Tenancy be set aside?

Background and Evidence

Both parties were in agreement as to the details of the tenancy. The tenancy began in 2007 and the current rent for the manufactured home site is \$579.35, due on the first day of every month. The most recent rental increase took effect on March 1, 2018.

The Landlord testified that the Tenant has not paid rent in an amount totalling \$2,493.55 as of the date of this hearing. This was also the amount listed on the 10 Day Notice dated April 19, 2018. The Landlord submitted that this amount includes rent that was unpaid for a few months in 2016 and 2017, as well as amounts still owing from short payment of rent from January to April 2018 and late fees in the amount of \$25.00 per month for the months where rent was not paid or not paid in full. Both parties confirmed that the full rent amount was paid for May 2018, after the issuance of the 10 Day Notice.

The Tenant testified that she does not owe rent in the amount that the Landlord is stating and instead, testified that she has overpaid rent on many occasions. The Tenant submitted that she would pay the rent by cheque, then be notified from the Landlord that the cheque came back as non-sufficient funds (NSF). Upon hearing this, she would pay the rent in cash, only to find that the cheque amount had cleared her bank. Due to this, the Tenant testified that there were many months where she paid rent twice, by both cheque and cash. The Tenant testified that receipts for cash payments were not provided, despite her request for a receipt.

The Tenant testified that she is in agreement regarding an outstanding amount of \$55.90 owing for the months of March and April 2018. She submitted that this was due to not receiving information on the rental increase that took effect on March 1, 2018 and therefore she was not

clear on how much rent to pay. The Tenant testified that she has paid the full amount of the rent for May 2018 that includes the amount of the rental increase.

The Landlord submitted the Notice of Rent Increase dated November 16, 2017 in evidence. The notice states that the rent increase was to take effect on March 1, 2018. There was no documentary evidence provided regarding service of this notice. The Landlord testified that the Notice of Rent Increase was served in person in November 2017, shortly after the date the notice was signed.

The Landlord testified that they served a 10 Day Notice on April 19, 2018 by delivering the notice in person with a witness. The Tenant confirmed receipt of this notice on April 19, 2018. The Landlord testified that they have not received any payments towards the amount listed on the 10 Day Notice. They are in agreement with the Tenant that rent for May 2018 has been paid.

The Tenant testified that the Landlord's account statements submitted in evidence show that she has overpaid on multiple occasions due to paying in cash after being notified incorrectly that a cheque was returned as NSF.

The Landlord testified that the account statements they submitted in evidence show that there are amounts outstanding due to NSF payments or underpayments of the rent amount.

The Landlord submitted in evidence a letter from their bank dated April 30, 2018. The letter states that a cheque from the Tenant dated August 1, 2016 in the amount of \$537.00 was returned due to non-sufficient funds. The letter also states that a cheque from the Tenant dated January 1, 2017 in the amount of \$537.00 and a cheque dated February 1, 2017 in the amount of \$37.00 were returned to the Landlord due to the account being frozen or funds not being cleared. The letter states that in the case of all three of the cheques noted above, the amount listed on the cheques were not deposited into the Landlord's account.

Settlement was brought up as an option during the hearing, but neither party presented any potential settlement proposals for discussion. At the end of the hearing, the parties remained in disagreement as to whether there is an amount of rent that remains unpaid and a resolution of the dispute.

Analysis

During the hearing, the parties presented conflicting testimony regarding whether the 10 Day Notice dated April 19, 2018 was issued for valid reasons based on unpaid rent. As a resulting of the conflicting testimony, I look to the testimony and evidence that was submitted by both parties to determine what is likely to have occurred on a balance of probabilities.

Section 20 of the *Act* states that rent must be paid when it is due. While there is evidence showing that monthly rent cheques were provided by the Tenant, there is insufficient evidence to show that all of the amounts paid by cheque were debited from the Tenant's bank account and deposited into the Landlord's account.

The Landlord provided evidence from their bank that states three cheques from the Tenant were returned by the bank as NSF or funds frozen/not cleared. These cheques were dated August 2016, January 2017 and February 2017.

There was no evidence showing that the NSF cheques in question were noted as NSF in error, and that the funds had been debited from the Tenant's bank account. In the absence of evidence demonstrating that the cheques were erroneously marked as NSF, I find it probable that there are at least three cheques where the transfer of funds from the Tenant's bank to the Landlord's bank did not occur and therefore, that the amount listed on these cheques is still owing.

The Tenant testified that she paid rent in cash each time she was informed by the Landlord that a cheque was returned NSF to ensure she was still paying rent. I find that there is insufficient evidence to show this is what occurred. Neither party submitted receipts for rent paid in cash and the account statements submitted by the Landlord note the NSF cheques, but not re-payment by cash.

In the absence of evidence from either party showing that cash was paid to cover the returned cheques, I am not able to determine that rent was paid following notification of an NSF cheque and therefore it is probable that those amounts remain unpaid.

In the absence of a monetary claim application from the Landlord, I find that the exact amount of unpaid rent is not in dispute for this decision and instead, that to determine the validity of a 10 Day Notice, it is only relevant to make a finding on whether there is an amount of rent owing or not.

Although the parties were in agreement that an amount of \$55.90 was owing due to underpayment of rent for the months of March and April 2018 following a rent increase, there was insufficient evidence to show whether the Tenant was properly served with the Notice of Rent Increase in November 2017.

However, in reviewing the relevant evidence and the testimony of both parties, I find that there is an amount of rent outstanding based on cheques that were returned as non-sufficient funds. I also find that there is no evidence showing that the amount owing as a result of the cheques being returned as NSF was resolved by the Tenant. Therefore, I find that the 10 Day Notice based on unpaid rent dated April 19, 2018 is valid.

Upon review of the 10 Day Notice that was submitted in evidence, I find that it complies with Section 45 of the *Act*. Pursuant to Section 48 of the *Act*, when a 10 Day Notice complies with Section 45 and when the notice is upheld, an Order of Possession must be granted to the Landlord.

In accordance with the above, an Order of Possession will be granted to the Landlord to be served upon the Tenant as soon as possible. The Order of Possession will be effective two (2) days after service on the Tenant.

Conclusion

The Tenant's application to suspend or restrict the Landlord's right to enter the manufactured home site is dismissed without leave to reapply.

I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenant. 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.

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: May 29, 2018

Residential Tenancy Branch