



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CEDAR RIDGE MOBILE HOME PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR, MT, LRE, FFT

Introduction

A hearing was convened on April 12, 2018 in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities, for more time to apply to cancel the Notice to End Tenancy, for an Order restricting or setting limits on the Landlord's right to enter the rental unit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail, although she cannot recall the date of service. The Agent for the Landlord stated that these documents were received, via registered mail, on March 27, 2018.

April 03, 2018 the Landlord submitted 35 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on March 28, 2018. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The hearing on April 12, 2018 was adjourned to provide the Tenant with the opportunity to submit deposit records to support her submission that she paid all of her rent for the period between January 01, 2017 and March 31, 2018. The hearing was reconvened on June 27, 2018 and was concluded on that date.

On April 19, 2017 the Tenant submitted 47 pages of evidence to the Residential Tenancy Branch, which included copies of her bank statements from 2017. The Tenant was advised that any evidence that was not directly relevant to payment of her rent would not be considered as evidence at these proceedings.

The Tenant stated that she mailed her 47 pages of evidence to the Landlord, via registered mail, although she cannot recall the date of service. She stated that this evidence was returned to her because she sent it to the wrong address. She stated that she mailed her 47 pages of evidence to the Landlord again, via registered mail, although she cannot recall the date of service. The Tenant was unable to locate her Canada Post receipt for either of these service attempts.

The Agent for the Landlord stated that he did not receive any evidence from the Tenant after the hearing on April 12, 2017. He stated that he would like to avoid further delays and that he is, therefore, willing to accept my description of the bank records submitted by the Tenant. The bank records the Tenant submitted on April 19, 2018 were, therefore, accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter #1

The Tenant stated that on February 03, 2018 she received the Ten Day Notice to End Tenancy for Unpaid Rent that is the subject of these proceedings. The evidence shows that she disputed the Notice to End Tenancy on February 08, 2018.

As the Tenant filed this Application for Dispute Resolution within five days of receiving it, I find that she filed the Application within the timelines established by section 39(4) of the *Manufactured Home Park Tenancy Act (Act)*. I therefore find that it is not necessary for me to consider the Tenant's application for more time to apply to cancel the Notice to End Tenancy.

Preliminary Matter #2

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant has identified issues on the Application for Dispute Resolution which are not sufficiently related to be determined during these proceedings.

I will, therefore, only consider the most urgent matter before me, which is the application to cancel the Notice to End Tenancy for Unpaid Rent and the related matter of the filing fee. The Tenant's application for an Order restricting or setting limits on the Landlord's right to enter the rental unit is dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Background and Evidence

The Landlord and the Tenant agree that during this tenancy the parties have entered into a series of fixed term tenancy agreements. The most recent tenancy agreement, which was signed by the Tenant on January 20, 2017, declares that the tenancy began on February 01, 2017. The tenancy agreement declares that this tenancy is for a fixed term of one year and that the Tenant must vacate the rental site on January 31, 2018.

The Agent for the Landlord stated that he does not believe the Tenant is currently living on the site. The Tenant stated that she is still periodically staying on the site.

The Landlord and the Tenant agree that rent of \$350.00 is due by the first day of each month.

The Landlord stated that on February 01, 2018 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which had an effective date of February 10, 2018, was posted on the door of the rental unit. The Tenant stated that this Notice was located on February 03, 2018.

At the hearing on April 12, 2018 the Landlord and the Tenant agreed that at one point the Tenant was paying her rent by cheque and, more recently, she has been paying rent by directly depositing it into the Landlord's bank account.

At the hearing on April 12, 2018 the Agent for the Landlord stated that because of the size of the Landlord's bank account it is difficult for the Landlord to determine whether the Tenant has been paid for any given month. He stated that she has been repeatedly asked to submit proof of payment of rent for the last 18 months and she did not do so until recently, at which time she provided proof of payment for six months.

At the hearing on April 12, 2018 the Agent for the Landlord stated that on the basis of the proof of payments provided by the Tenant, the Landlord accepts that rent has been paid for the period between January 01, 2017 and June 30, 2017. He stated that the Landlord does not know if rent was paid for any period between July 01, 2017 and March 31, 2018. He stated that the Landlord received a cheque for April of 2018 and that the Tenant was provided a receipt for "use and occupancy" only.

At the hearing on April 12, 2018 the Tenant stated that she has paid all of the rent for the period between January 01, 2017 and March 31, 2018 by directly depositing it into the Landlord's bank account. She stated that she had documentary proof that her rent was paid with her at the time of the hearing on April 12, 2018 but she did not have time to submit them as evidence for these proceedings.

At the hearing on June 27, 2018 the Agent for the Landlord stated that the Landlord is satisfied that rent has been paid for the period between July 01, 2017 and March 31, 2018. He stated that the Landlord has a record of three payments, in the amount of \$350.00 each, which were deposited into the Landlord's accounts on January 03, 2018; February 09, 2018; and March 05, 2018. He stated that these deposits have not been accounted for and the Landlord presumes they were rent payments made by the Tenant.

At the hearing on June 27, 2018 the Tenant initially stated that she paid her rent for January, February, and March of 2018 by leaving a cheque in the Landlord's mail box. She stated that she left a cheque in the mail box on January 03, 2018, February 02, 2018, and March 05, 2018. She subsequently stated that her rent for January of 2018 was paid by directly depositing it into the Landlord's account and that the rent for February and March of 2018 were paid by cheque.

She stated that the Landlord must have delayed cashing her February cheque until February 09, 2018, which she speculates would explain why his bank records indicate the payments was made on February 09, 2018.

The Agent for the Landlord stated that he has no record of the Tenant paying her rent by cheque in 2018.

The Tenant stated that she provided the Residential Tenancy Branch with her bank records that show when her rent was paid in January, February, and March of 2018. The Tenant was advised that no 2018 bank records were included in the evidence she electronically uploaded on April 19, 2018.

The Tenant was asked to read out the entries on her bank records for the rent payments she made in January, February, and March of 2018, at which time she stated she did not have a bank record for the March payment. She stated that the entry in her bank records beside the payment for January 03, 2018 reads: "transfer out to Sal 1406867 chequing" and "rent" on the second line. She stated that the entry in her bank

records beside the payment for February 02, 2018 reads: "transfer out to Sal 1406867 chequing" in the first line and "rent" on the second line.

The Tenant was directed to an entry on her bank statement from January 05, 2017, for the amount of \$300.00. Beside this entry there is an entry "#115" in one column and in the next column there is the letters "ck". The Tenant agreed that this entry indicates she wrote a cheque for \$300.00 and that the number of that cheque is 115.

The Tenant was asked why there was not a corresponding cheque number in her bank records for the rent payment she allegedly made, by cheque, on February 02, 2018. The Tenant referred to her bank records again and stated the number 121 is listed beside the payment for January 03, 2018 and the number 119 is listed beside the payment for February 02, 2018. She stated that she did not notice those numbers when she was initially asked to read out the entries beside her rent payments for January and February of 2018.

The Tenant stated that she did not provide proof of rent payments to the Landlord when it was initially requested it because she believes it is the Landlord's responsibility to manage the Landlord's financial records.

Analysis

.On the basis of the undisputed evidence I find that rent of \$350.00 was due on February 01, 2018.

Section 20(1) of the *Manufactured Home Park Tenancy Act (Act)* stipulates 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. I therefore find that the Tenant was obligated to pay rent on January 01, 2018 and on February 01, 2018, pursuant to section 20(1) of the Act.

On the basis of the testimony of the Agent for the Landlord I find that there was a deposit made to the Landlord's bank account on February 09, 2018, in the amount of \$350.00. As the Tenant informed the Landlord that she paid her rent for February of 2018 and the Landlord could find no other reasonable explanation for this payment, I find it was reasonable for the Landlord to conclude that this payment was made by the Tenant for February's rent.

I find that the Tenant has submitted insufficient evidence to corroborate her testimony that she paid her rent, by cheque, on February 02, 2018. I find that the Tenant failed to provide documentary evidence corroborating this claim, even though the hearing on April 12, 2018 was adjourned for that specific purpose. Although the Tenant insists she submitted proof of that payment, it was not contained in the evidence that she electronically uploaded on April 19, 2018. Although the Tenant may believe that evidence was uploaded, it was not.

I favour the testimony of the Agent for the Landlord, who testified that a payment of \$350.00 was directly deposited in the Landlord's account on February 09, 2018 over the testimony of the Tenant who stated that she provided the Landlord with a rent cheque for \$350.00 on February 02, 2018. I favoured the testimony of the Agent for the Landlord because his evidence was direct and forthright. Conversely, the Tenant's evidence was inconsistent and, therefore, less reliable.

In determining that the Tenant's evidence was inconsistent I was influenced, in part, by the fact the Tenant testified at the first hearing that she paid all of the rent for the period between January 01, 2017 and March 31, 2018 by direct deposit. At the second hearing she initially testified that she paid her rent for January, February, and March of 2018 by cheque and she subsequently testified that she paid her rent for January of 2018 by direct deposit and her rent for February and March of 2018 by cheque.

I find that the Tenant's testimony that she paid her rent by cheque on February 02, 2018 is not credible. In reaching this conclusion I was influenced, in part, by her description of the entry in her bank record beside this alleged payment. The Tenant testified that the entry read "transfer out to Sal 1406867 chequing" on the first line and "rent" on the second line. This entry is relatively consistent with the entry beside the electronic rent payments the Tenant made throughout 2017, which read "member 1406867 sal cheq 0" on the first line and "Desc. Desc. Rent" on the second line. The similarity between these two entries cause me to conclude that she paid her rent for February by directly depositing it in the Landlord's bank account, as she has throughout 2017.

In determining that the Tenant's testimony that her rent was paid by cheque on February 02, 2018 was not credible I was influenced, in part, by the Tenant's acknowledgement that the entry on her bank statement from January 05, 2017, for the amount of \$300.00, was identified by cheque number #115, and that this entry relates to a cheque that she had written. I find her subsequent testimony that cheque number #121 is listed beside the entry in her bank record for the payment made on February 02,

2018 is simply not credible, as she did not provide that number until she was asked why a cheque number did not appear beside this entry.

In determining that her testimony that her rent was paid by cheque on February 02, 2018 was not credible I was influenced, in part, by the Tenant's testimony that the cheque #119 is listed beside the entry on the bank statement for January 03, 2018. As the Tenant had previously stated that her rent was paid by direct deposit in January of 2018, I find that there should not have been any reference to a cheque number beside this payment. This causes me to conclude that the Tenant is not accurately reporting the information on her bank statement from 2018.

I find that the Tenant's testimony that she paid her rent, by cheque, on February 02, 2018 is not credible in large part because the Tenant testified that her bank statement reflects that her rent was paid on February 02, 2018. In the event the Tenant paid her rent by cheque and the Landlord did not cash that cheque until February 09, 2018, as the Tenant contends, the Tenant's bank statement would reflect that the cheque was cashed on February 09, 2018. The Tenant's testimony that her bank statement shows that the rent was paid on February 02, 2018 is simply not consistent with normal banking practices. Bank statements typically reflect the date a cheque clears the bank, not the date the cheque was written.

I find that the Tenant's testimony regarding the rent payment for February of 2018 is unreliable and I therefore accept the Agent for the Landlord's testimony that the deposit of \$350.00 that was made on February 09, 2018 is the date the rent was paid for February of 2018.

On the basis of the undisputed testimony I find that the Tenant paid her rent for January of 2018 on January 03, 2018, and that her rent had been paid in full on January 03, 2018.

Section 39(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. (Emphasis added)

On the basis of the undisputed evidence I find that on February 01, 2018 the Landlord posted a Ten Day Notice to End Tenancy, which was dated February 01, 2018, on the door of the rental unit. As no rent was overdue on February 01, 2018 I find that the

Landlord did not have the right to serve the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent on February 01, 2018.

To end this tenancy on the basis of rent not being paid on time for February of 2018, in accordance with section 39(1) of the *Act*, the Landlord would have had to serve the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent on, or after, February 02, 2018. As the Landlord served this Ten Day Notice to End Tenancy for Unpaid Rent before the rent was overdue on February 01, 2018, I must grant the Tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent, dated February 01, 2018.

As the Tenant's Application for Dispute Resolution has merit, I grant her application to recover the fee she paid to file this Application for Dispute Resolution.

Conclusion

The Ten Day Notice to End Tenancy for Unpaid Rent, dated February 01, 2018, is set aside.

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The Tenant has established a monetary claim of \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Tenant a monetary Order for \$100.00. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court, and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 27, 2018

Residential Tenancy Branch