



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRYSTAL RIVER COURT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On May 16, 2018, the Tenant applied for a dispute resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 40 of the *Act* and seeking recovery of the filing fee pursuant to section 65 of the *Act*.

The Tenant attended the hearing and J.N. attended the hearing on behalf of the Landlord. Both parties provided a solemn affirmation.

The Tenant confirmed that she served the Landlord the Notice of Hearing package by registered mail on May 23, 2018 and J.N. confirmed receipt of this package. As such, and in accordance with sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Tenant’s Notice of Hearing package.

I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

J.N. stated that the tenancy started on November 1, 2008 and rent was originally established at \$345.00 per month, due on the first day of each month. The Tenant

confirmed these details; however, she stated that she actually moved in on August 5, 2008 and that her rent was currently \$464.45.

J.N. testified that the Notice was served personally to the Tenant on May 2, 2018 and one of the reasons for the Notice being issued was due to repeated late payment of rent. J.N. included in his written submissions a history of the Tenant paying rent late repeatedly along with multiple 10 Day Notices to End Tenancy for Unpaid Rent that were issued to the Tenant. J.N. gave affirmed testimony referencing these Notices and identified the most recent late payments of rent as March 2018, April 2018, and May 2018. The Tenant confirmed that she has paid these months late and that she has been late paying rent in other months as well.

Analysis

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of section 45 of the *Act*. I find that the Notice meets all of the requirements of section 45.

In addition, I note the wording of Policy Guideline #38 provides the following guidance regarding the circumstances whereby a Landlord may end a tenancy where the Tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions...

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late...

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."

The undisputed evidence before me is that the tenancy agreement requires the Tenant to pay all of the rent by the first of each month and that rent was not paid in full on the first of each month at least three times recently. Consequently, I am satisfied that this pattern of multiple late payments of rent throughout the months leading up to the issuance of the Notice is sufficient to justify the Notice.

Ultimately, I find that the Landlord is entitled to an Order of Possession; however, J.N. wished to allow the Tenant to stay until July 15, 2018 provided that half the month of July's rent was paid. As such, I grant the Landlord an Order of Possession that takes effect at **1:00 p.m. on July 15, 2018**, the last day in which the Landlord's acceptance of payment for use and occupancy only enables the Tenant to remain in this rental unit. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit by **1:00 p.m. on July 15, 2018**, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Tenant was unsuccessful in her claims, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Landlord is provided with a formal copy of an Order of Possession effective by **1:00 p.m. on July 15, 2018**. Should the Tenant or any occupant on the premises 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: June 29, 2018

Residential Tenancy Branch