



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SPARDELL MOBILE HOME PARK LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FFL
 CNC FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord.

The tenant and an agent for the landlord company attended the hearing and both were accompanied by assistants who did not testify. The tenant and the landlord's agent each gave affirmed testimony, and the parties or their assistants were given the opportunity to question each other.

The landlord's agent advised that the tenant's evidentiary material was not received by the landlord until June 20, 2018, and as an applicant, should have provided it to the landlord by June 12. The landlord has not had an opportunity to respond to it but has reviewed it, and asks that it be disallowed. The tenant advised that he was overwhelmed with paper, and upon reading the material provided by the Residential Tenancy Branch believed he had to serve it 7 days prior to the hearing.

The Rules of Procedure require an applicant to serve evidence to a respondent at least 14 days before the hearing, and a respondent to serve evidence on an applicant at least 7 days prior to the hearing. In this case, the tenant is both an applicant and a respondent. The landlord has had an opportunity to review the tenant's evidence, and the landlord was given the opportunity during the hearing to respond to it. In the circumstances, considering that the evidence of the tenant may be for his defence and as a respondent, and considering that the landlord has had an opportunity to review and

orally respond to it, I find that all evidence of both parties should be, and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 24, 2010 and the tenant still resides in the manufactured home on a site in the manufactured home park. Rent in the amount of \$205.00 per month was payable on the 1st day of each month at the beginning of the tenancy, and is currently \$310.00 per month. A copy of the tenancy agreement has been provided as evidence for this hearing, and there are currently no rental arrears.

The landlord further testified that on April 11, 2018 at 6:00 p.m. the landlord posted a One Month Notice to End Tenancy for Cause on the door of the tenant's manufactured home. A copy has been provided for this hearing by the landlord and it is dated April 24, 2018 and contains an effective date of vacancy of May 31, 2018. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that the tenant is always late with the rent, and the landlord does not recall rent ever being paid on time. Once or twice per month the landlord has called the tenant reminding him that rent is due, and leaving messages indicating that this wasn't working very well. The tenant never once picked up the phone or returned the landlord's call and was totally uncooperative.

The landlord issued some 10 Day Notices to End Tenancy for Unpaid Rent or Utilities, and copies have been provided for this hearing. The landlord testified that they show that the tenant was substantially in arrears on occasion. The tenant made partial payments after they were issued, and eventually paid up. The landlord understands that people can be short on funds and tries to work with tenants, but 8 years of leaving messages has put the landlord at his wit's end.

The tenant testified that he purchased the manufactured home from the landlord and agrees that the tenancy began on May 24, 2010.

With the tenant's work schedule and working out of town, rent wasn't paid on time, but the landlord didn't charge interest or a late fee, and the tenant didn't believe it was such a serious situation. Every 3 months or so the tenant pays out the balance due, and testified that if he had known it was a problem, he would not risk his home. Half the time, the tenant's phone doesn't work.

The tenant also testified that once receiving the Notice to end the tenancy, he was blind-sided.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Manufactured Home Park Tenancy Act*, which can include the reason(s) for issuing it.

In this case, the landlord testified twice that he served the tenant with a One Month Notice to End Tenancy for Cause on April 11, 2018, and on one occasion that it was posted to the door at 6:00 p.m. on that date. I questioned the landlord about that, given that the copy provided by the landlord for this hearing is dated April 24, 2018. The tenant testified that he received it by registered mail, which is disputed by the landlord, however, I am not satisfied that the landlord has established that the One Month Notice to End Tenancy for Cause, which is the subject of this dispute, was served on the tenant in the manner and on the date that the landlord stated in his testimony. Further, the Notice provided by the landlord contains 2 reasons for issuing it, and the landlord gave no testimony about the second reason. Perhaps the landlord is confused, however the onus is on the landlord to establish that it was given in accordance with the *Act*.

The landlord's application is dismissed and the One Month Notice to End Tenancy for Cause dated April 24, 2018 is hereby cancelled and the tenancy continues.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenant as against the landlord in that amount and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety.

The One Month Notice to End Tenancy for Cause dated April 24, 2018 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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 27, 2018

Residential Tenancy Branch