



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FF

Introduction

On June 6, 2018 a hearing was conducted via conference call between these two parties. The landlord did not attend, but the tenant did. The landlord's application for dispute was dismissed. The landlord applied for a review of this decision for being unable to attend. The arbitrator ordered the decision and accompanying order suspended pending a review hearing for the landlord's application.

This review hearing granted for the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 48;
- a monetary order for unpaid rent pursuant to section 60;
- authorization to recover its filing fee for this application from the tenant pursuant to section 65.

Both parties attended the hearing via conference call and confirmed receipt of the notice of a review hearing and the submitted documentary evidence. As both parties have attended and confirmed receipt of the notice of a review hearing and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act. Neither party raised any issues with service.

During the hearing the landlord's agent (the landlord) clarified that due to a previous dispute resolution hearing the monetary issue has been resolved and can be cancelled. As such, no further action is required for the landlord's monetary claim.

During the hearing the landlord also withdrew reasons #2 and #3 from the 1 Month Notice dated February 1, 2018. As such, no further action is required for reasons #2 and #3 of the 1 Month Notice dated February 1, 2018.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 1, 2017 on a fixed term tenancy ending on January 31, 2018 as per the submitted copy of the signed tenancy agreement dated January 20, 2017. The monthly rent was \$350.00 payable on the 1st day of each month.

On February 1, 2018, the landlord served the tenant with the 1 Month Notice dated February 1, 2018. The 1 Month Notice sets out an effective end of tenancy date of March 4, 2018 and that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

As clarified above, the landlord is only proceeding on reasons #1 and #4:

- the tenant is repeatedly late paying rent;
- the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The details of cause listed on the 1 Month Notice states,

The tenant has kept rotting food and trash on the property for over 2 years causing a potential health issue and attracted bears and other predators. The tenant has subleased the property without consent of the landlord, the tenant has

allowed an agreeive breed of dog ot reside at the property that has attacted 2 other tenants and their pets, the tenant is repeatedly late in paying rent.

[Reproduced as written]

The landlord claims that the tenant is repeated late paying rent and has provided the following dates of rent paid as opposed to the 1st day of each month in which rent is due.

January 3, 2017	Rent paid for January 2017
March 2, 2017	Rent paid for March 2017
April 2, 2017	Rent paid for April 2017
June 5, 2017	Rent paid for June 2017
July 4, 2017	Rent paid for July 2017
February 9, 2018	Rent paid for February 2018
March 5, 2018	Rent paid for March 2018

The tenant argues that rent is paid on time, but that the landlord's bank does not process it until after due to holidays in which the payments are not processed prior to the 1st of each month. The tenant was not able to provide any specific details or evidence in support of these claims.

The landlord also claims that the tenant has "sublet" the rental premises without the written approval of the landlord. The tenant disputes this claim. During the hearing both parties agreed that the tenant had "sublet" the tenancy by having a "sub-tenant" as the landlord does not believe that the tenant occupies the rental space. The tenant stated that she still periodically stays at the rental unit, but has a primary residence elsewhere. The landlord argued that the tenant had a lease with the previous occupants in which the tenant had evicted. The tenant argued that he sister is currently staying in the rental space as she is in the process of renovating the premises.

In conclusion the landlord also argues that the tenant has failed to dispute the 1 month notice dated February 1, 2018 by filing an application for dispute. The tenant argued that an application for dispute of the 1 month notice was filed on February 2, 2018, but has not provided any evidence in support of this claim.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Section 47 (4) of the Act states in part, that a tenant may dispute a notice under this section within 10 Days of receiving the notice.

In this case, both parties confirmed that the landlord served the tenant with the 1 month notice dated February 1, 2018 by posting it to the rental unit door on February 1, 2018. Pursuant to section 90 of the Act, the tenant is deemed to have been served 3 days later.

Section 47 (5) of the Act states in part, that if a tenant who has received a notice under this section does not make an application in accordance with subsection 47(4) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

As such, I find that the tenant is conclusively presumed to have accepted that the tenancy ended. The 1 month notice specifies an effective end of tenancy date of March 4, 2018. Pursuant to the Act, the effective end of tenancy date is corrected to March 31, 2018 as the date provided by the landlord is not 1 months' notice.

The landlord is granted an order of possession to be effective 2 days after service upon the tenant as the effective end of tenancy date has now passed. As the landlord is granted an order of possession under section 47(5) of the Act, the merits of the landlord's reason for cause were not addressed.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.
The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenant. Should the tenant fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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: August 07, 2018

Residential Tenancy Branch