



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COWICHAN LAKE REC COMM CLRC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On September 11, 2018, the Tenant submitted an Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* ("the Act") requesting to cancel a 1 Month Notice To End Tenancy For Cause dated August 29, 2018.

The matter was set for a conference call hearing and the Tenant and Landlord appeared at the hearing. Both parties provided affirmed testimony and were provided the opportunity to present evidence orally, and make submissions to me. In this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Matters

The Tenant's application indicates his application was submitted to the Residential Tenancy Branch on September 11, 2018.

The Tenant provided affirmed testimony that he received a 1 Month Notice To End Tenancy For Cause dated August 29, 2018, in person, from the Landlord's agent on August 30, 2018.

The 1 Month Notice provides information for Tenants who receive the Notice. The 1 Month Notice provides that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

If a Tenant does not file an Application within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of the Notice.

Section 40(5) of the Act provides: *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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the manufactured home site by that date.*

The Residential Tenancy Branch case management system indicates that the filing fee of \$100.00 was received on September 11, 2018 at 1:05 pm.

The Residential Tenancy Branch Rule of Procedure 2.6 provides that an application for dispute resolution has been made when the fee has been paid or when all the documents for a fee waiver have been submitted.

The Tenant testified that he believes a mistake was made at Service BC. He testified that after he applied he had to come back the next day to pick up the notice of hearing documents. The Tenant testified that he probably paid for the application on September 11, 2018.

The case management system indicates that at 1:18 pm on September 11, 2018, the Tenant was contacted to come to Service BC to pick up the notice of hearing documents.

The Tenant's application does not include a request for more time to dispute a notice to end tenancy.

Section 59 of the Act provides that the director may extend a time limit established by the Act only in exceptional circumstances.

The Landlord testified that the Tenant's application is clear that the Tenant applied to dispute the 1 Month Notice on September 11, 2018.

The Landlord is requesting an order of possession for the rental site. The Landlord agreed to give the Tenant until the end of November 2018, to vacate the rental property.

Analysis

Based on the evidence before me, and on a balance of probabilities, I find that the Tenant's application to dispute the 1 Month Notice was not made until September 11, 2018, when the filing fee payment was received. While I acknowledge that the tenant may have intended to dispute the Notice earlier, I find that an application is not made until the fee is paid or waived.

The Tenant did not apply for additional time to dispute the 1 Month Notice. I find that pursuant to section 40(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the manufactured home site by that date.

I dismiss the Tenant's Application to cancel the 1 Month Notice dated August 29, 2018. The Tenant did not make apply for dispute resolution within 10 days of receiving the Notice.

Pursuant to section 48(2) of the Act, a Landlord may request an order of possession of a manufactured home site when a notice to end the tenancy has been given by the Landlord, the Tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

The Landlord requested that, if he is successful in this hearing, he would like an order of possession effective November 30, 2018.

I find that the Landlord is entitled to an order of possession effective November 30, 2018, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant's application to dispute a 1 Month Notice to End Tenancy For Cause is late and is dismissed. I grant the Landlord an order of possession effective November 30, 2018. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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 *Manufactured Home Park Tenancy Act*.

Dated: October 23, 2018

Residential Tenancy Branch