



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 40;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 39;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 60; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 65.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified that the landlord was personally served with the notice of dispute resolution package and the first amendment package on August 9, 2018. The landlord confirmed receipt of the first amendment package and the dispute resolution package on August 9, 2018. I find that the landlord was served with these packages on August 9, 2018, in accordance with sections 81 and 82 of the *Act*.

The tenants testified that the landlord was personally served with a second amendment package on August 24, 2018. The landlord confirmed receipt of the second amendment package on August 24, 2018. I find that the landlord was served with this package on August 24, 2018, in accordance with section 81 of the *Act*.

I note that Section 48 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the One Month Notice to End Tenancy for repeated late payment of rent (the “One Month Notice”) and the 10 Day Notice to End tenancy for unpaid rent (the “10 Day Notice”) and the continuation of this tenancy are not sufficiently related to the tenants’ monetary claim to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notices to End Tenancy.

The tenants’ claim for a Monetary Order for damage or compensation under the *Act* is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice and the 10 Day Notice. I exercise my discretion to dismiss the tenants’ claim for a Monetary Order for damage or compensation under the *Act* with leave to reapply.

Service of Evidence

Both parties agreed that the landlord served the tenants with his evidence package on September 4, 2018 by putting a copy of his evidence package in the tenants’ mailbox. The tenants testified that they received the evidence package on September 4, 2018.

The tenants testified that they called the Residential Tenancy Branch and were informed that the landlord’s evidence package had to be served either in person or by registered mail and that since it was not, that it should be excluded.

Section 81(f) of the *Act* states that all documents, other than those referred to in section 82 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord.

I find that the landlord served the tenants with his evidence package on September 4, 2018 in accordance with section 81 of the *Act*. Therefore, I admit the landlord’s evidence package.

Issue(s) to be Decided

1. Are the tenants' entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 40 of the *Act*?
2. Are the tenants' entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 39 of the *Act*?
3. Are the tenants' entitled to recover the filing fee for this application from the landlord, pursuant to section 65 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 7, 2014 and is currently ongoing. Monthly rent in the amount of \$376.00 is payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on August 2, 2018 he served the tenants with a 10 Day Notice to End Tenancy for unpaid rent with an effective date of August 15, 2018 (the "10 Day Notice") by leaving a copy in the tenants' mailbox. The tenants confirmed receipt of the 10 Day Notice on August 2, 2018.

The landlord testified that the tenants did not pay rent in the amount of \$376.00 on August 1, 2018 when it was due. Both parties agree that the tenants paid August 2018's rent in full on August 2, 2018.

The landlord testified that on August 2, 2018 he served the tenants with a One Month Notice to End Tenancy for repeated late payment of rent with an effective date of September 30, 2018 (the "One Month Notice") by leaving a copy in the tenants' mailbox. The tenants confirmed receipt of the One Month Notice on August 2, 2018.

The landlord testified that the tenants were late paying rent in April and August 2018. The tenants testified that they accidentally wrote April 31, 2018 on the rent cheque for April instead of April 1, 2018. When the mistake was brought to their attention on April 4, 2018, the tenants testified that they provided the landlord with a new rent cheque. The landlord testified that he received the tenant's rent for April on April 4, 2018.

The landlord testified that the tenants were issued with two 10 Day Notices, one in February 2018 and one in August of 2018 following written demand for unpaid utilities. The landlord testified that the 10 Day Notices were served on the tenants for unpaid storage fees.

Analysis

Based on the testimony of both parties, I find that service of the 10 Day Notice was effected on the tenants on August 2, 2018, in accordance with section 81 of the *Act*.

Section 39(4) of the *Act* states that within 5 days after receiving a 10 Day Notice, the tenant may:

- pay the overdue rent, in which case the notice has no effect.

I find that the tenants paid their overdue rent on August 2, 2018, which is within 5 days of receiving the 10 Day Notice. Therefore, the 10 Day Notice is of no force or effect.

Based on the testimony of both parties, I find that service of the One Month Notice was effected on the tenants on August 2, 2018, in accordance with section 81 of the *Act*.

Section 40(1)(a) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Residential Policy Guideline 38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

I find that the tenants were late paying rent in April and August of 2018. Since the tenants were late paying rent on two occasions, not three, I find that the One Month Notice is of no force or effect and is cancelled. I find that unpaid utilities are not considered rent for the purposes of section 40 of the *Act* and that storage fees are not utilities.

As the tenants were successful in their application, I find that the tenants are entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 65 of the *Act*.

Section 65 of the *Act* states that if the landlord is ordered to pay an amount to a tenant, the amount may be deducted from any rent due to the landlord.

Conclusion

I dismiss the tenants' claim for a Monetary Order for damage or compensation under the *Act* with leave to reapply.

The 10 Day Notice is of no force or effect.

The One Month Notice is of no force or effect.

I issue a Monetary Order to the tenants in the amount of \$100.00.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Manufactured Home Park Tenancy Act*.

Dated: September 25, 2018

Residential Tenancy Branch