



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application: OPR, MNR, FFL
Tenant's application: CNR, MNDCT, OLC, FFT

Introduction

This hearing was convened as a result of Applications for Dispute Resolution ("applications") by both parties under the *Manufactured Home Park Tenancy Act* ("Act").

The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 5, 2018 ("10 Day Notice"), for a monetary claim of \$250.00 for unpaid site rent, and to recover the cost of the filing fee.

The tenant applied to cancel the 10 Day Notice, for a monetary claim of \$500.00 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant, a support person for the tenant, a witness for the tenant who did not testify and the landlords attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The tenant confirmed that they received evidence from the landlord and that they had the opportunity to review that evidence prior to the hearing. The tenant also confirmed that he did not serve the landlord with documentary evidence. I find the tenant was sufficiently served under the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure (“Rules”) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application; the most urgent of which is the application to set aside the 10 Day Notice. I find that not all the claims on the tenant’s application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant’s request to set aside the 10 Day Notice, the tenant’s application to recover the filing fee and the landlord’s application at this proceeding. The balance of the tenant’s application is dismissed, with leave to re-apply.

Issues to be Decided

- Should the 10 Day Notice for Unpaid Rent or Utilities be cancelled?
- If yes, is the landlord entitled to an order of possession?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenant agreement was submitted in evidence. A month to month tenancy began on May 1, 1995. The parties agreed that currently, monthly site rent was \$250.00 per month and was due on the first day of each month.

The tenant testified that he received the 10 Day Notice on July 5, 2018 which had an effective vacancy date of July 15, 2018 and indicated that \$250.00 in unpaid site rent was due as of July 1, 2018. The tenant disputed the 10 Day Notice on July 9, 2018.

The parties agreed that the tenant did not pay the \$250.00 rent until July 13, 2018 which is beyond the five day period of the 10 Day Notice dated July 5, 2018. The tenant claims that he did not pay rent as he received a 12 Month Notice to End Tenancy for Conversion of a Manufactured Home Park dated April 27, 2018 and with an effective vacancy date of April 30, 2019 (“12 Month Notice”). The tenant explained that he did not pay rent as he “thought he did not have to pay” however could not explain why he paid rent for the months of May and June of 2018 before he stopped paying rent in July 2018.

The landlord stated that money was accepted for “use and occupancy only” on July 13, 2018 for the month of July 2018 and has also been accepted for the same reason for the months of August and September of 2018. The landlords are seeking an order of possession based on the 10 Day Notice.

Analysis

Based on the documentary evidence, oral testimony and on the balance of probabilities, I find the following.

There is no dispute that the tenant was served on July 5, 2018 with the 10 Day Notice. The effective vacancy date on the 10 Day Notice is listed as July 15, 2018. The tenant continues to occupy the rental site. The tenant submitted his application for dispute resolution on July 9, 2018. Section 39 of the *Act* states:

39 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 45 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or 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 manufactured home site to which the notice relates by that date.

[My emphasis added]

Based on the above, the last possible day on which the tenant could pay rent in full was on July 10, 2018 which was a Tuesday. The tenant did not pay site rent until July 13, 2018. I find the tenant's reasoning as to why they did not pay rent to be unreasonable in that the tenant claims they thought they did not have to pay rent for the last year yet did pay rent since after receiving the 12 Month Notice in April 2018 by paying May and June 2018 and then deciding in July 2018 not to pay rent until July 13, 2018.

The tenant is not entitled to withhold 12 months' rent when served with a 12 Month Notice. In fact, section 41 of the *Act* states that the compensation owed to the tenant is to be paid on or before the effective vacancy date so the landlord has the discretion to wait until the effective vacancy date on April 30, 2019 before paying the tenant any compensation. Given the above, I dismiss the tenant's application as the tenant failed to pay rent within five days of July 5, 2018, which is the date the tenant received the 10 Day Notice. I find the landlord's application is successful for an order of possession as a result. Pursuant to section 48 of the *Act* I must grant the landlord an order of possession as I find that the 10 Day Notice complies with section 45 of the *Act* and is a valid notice. Therefore, as money for use and occupancy has been paid for September 2018, I grant the landlord an order of possession effective **September 30, 2018 at 1:00 p.m.** The landlord must serve the tenant with the order of possession.

I find the tenancy ended on July 15, 2018 which was the effective date of the 10 Day Notice.

As the landlord's application was successful, I grant the landlord **\$100.00** pursuant to sections 67 and 72 of the *Act* for the recovery of the cost of the filing fee.

As the tenants paid the \$250.00 site rent being claimed, albeit late, I dismiss the landlord's application for unpaid site rent.

As the tenant was not successful with his application, I do not grant the tenant the recovery of his filing fee.

Conclusion

The landlord's application is partially successful.

The tenant's application to cancel the 10 Day Notice is dismissed due to insufficient evidence, without leave to reapply. The monetary claim of the tenant as indicated above, is dismissed with leave to reapply.

The landlord has been granted an order of possession effective September 30, 2018 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The tenancy ended based on the 10 Day Notice as of July 15, 2018.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 4, 2018

Residential Tenancy Branch