



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPC CNC OLC FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for cause pursuant to section 48;
- authorization to recover the filing fee for this application pursuant to section 65.

Tenant:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 40;
- authorization to recover the filing fee for this application pursuant to section 65.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Preliminary Issue: Service of respective Applications for Dispute Resolution

The tenant acknowledged service of the landlord’s application for dispute resolution.

On behalf of the landlord, C.P. testified that the landlord has not been served with the tenant’s application.

The tenant initially testified that he left a copy of the application on the desk in the landlord’s office with “one of the girls”. The tenant then clarified that he had his mother drop it off. The tenant could not provide a date on which this was done or to whom a copy of the application was provided. The tenant did not have his mother present as a

witness to testify with respect to service of his application. The tenant did not submit any witnessed proof of service form.

C.P. testified that she double checked with the secretary who confirmed that she had not received any application from the tenant or his mother.

Section 82 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

82(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 64(1) [director's orders: delivery and service of document]...*

As the tenant was not able to provide a firm date of service or any testimony from his mother who allegedly served the application or any witnessed proof of service form, I am not satisfied the landlord has been served with the tenant's application for dispute resolution in a manner required by section 82(1) of the *Act*.

As the tenant failed to prove service, the tenant's application is dismissed in its entirety without leave to reapply.

Issues

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

Is the landlord entitled to recover its filing fee?

Background and Evidence

This Manufactured Home Park Tenancy began on May 24, 2010 and the current monthly rent is \$310.00 payable on the 1st day of each month.

The landlord testified that on July 10, 2018 the One Month Notice was sent to the tenant by registered mail.

The tenant acknowledged receipt of the One Month Notice.

The landlord issued the One Month Notice on the grounds that the tenant is repeatedly late paying rent. The landlord submitted a statement of rent payment history from January 2017 to July 2018 which shows the tenant has repeatedly been late paying rent. The landlord testified that since January 2017 the tenant has only paid rent on ten dates and is constantly late and paid in lump sums for months at a time. The landlord testified they have attempted to contact the tenant at his residence or by telephone on numerous occasions without success. The landlord testified that the tenant was late in paying June 2018 rent, July 2018 rent, August 2018 rent and his still not paid his rent for September 2018 as of the date of this hearing. The landlord testified that they are tired of dealing with this tenant and just want the tenancy to end.

The tenant testified that since the beginning of his tenancy 7 years ago the late rent payments have not been an issue. The tenant testified that he thought the practice was acceptable and that he always squared up the outstanding balance every three months. The tenant testified that he is not able to pay rent on time due to his weird work schedule. The tenant submits that he was never told that this was a problem in the past. The tenant acknowledged September 2018 rent was still outstanding.

In a related decision dated June 27, 2018, a previous One Month Notice issued by the landlord dated April 11, 2018 was cancelled. The previous One Month Notice was issued on the same ground of repeated late rent payments as well one additional ground. In the previous decision, the Arbitrator made no findings on the merits of the grounds for issuing the One Month Notice. Rather, the One Month Notice was cancelled as the Arbitrator did not accept it to be served on the tenant in the manner and date as specified by the landlord.

The tenant argues the One Month Notice subject to this application should also be cancelled as it has already been dealt with in the previous hearing and decision.

Analysis

I dismiss the tenant's argument that the subject matter of this application has already been decided upon in a previous hearing and decision. In the previous decision, a One Month Notice dated April 11, 2018 was cancelled. The landlord issued a new One Month Notice on July 10, 2018 which is subject to this application. In the previous decision, the Arbitrator made no findings with respect to the merits of the One Month Notice. The landlord was at liberty to issue a new One Month Notice on the same grounds as the previous Notice.

I am satisfied that the tenant was served with the One Month Notice on or before July 12, 2018, the date the tenant filed this application to dispute the Notice.

Section 40 of the Act contains provisions by which a landlord may end a tenancy for cause by giving a notice to end tenancy. Under this section, the tenant may make a dispute application within ten days of receiving the One Month Notice. If the tenant does not make an application for dispute within ten days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice, August 31, 2018.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, the tenant's application is dismissed in its entirety as I find the landlord was not served with the tenant's application as required by Rule 3.1 of the Residential Tenancy Branch Rules of Procedure.

I find that the One Month Notice complies with form and content requirements of section 45 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 48 of the Act.

Even if I had found the tenant's application had been served on the landlord, which I do not, I find the landlord still had cause to end the tenancy based upon the grounds of repeated late rent payments.

Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent provides that a minimum of three late payments constitutes cause pursuant to paragraph 40(1)(a) of the Act. In exceptional circumstances, an arbitrator may consider the reason(s) for the late payments.

Pursuant to section 20 of the Act, the tenant has the obligation to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the

regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenancy agreement sets out that rent in the amount of \$310.00 is due on the first day of each month. I accept the landlord's evidence that rent was repeatedly late on numerous occasions. The tenant did not deny the repeated late rent payments. Rather, the tenant argued that he thought the late payments were acceptable as he was never told it was an issue. I dismiss this argument as clearly the tenant ought to have known it was an issue when the landlord issued the previous One Month Notice on April 11, 2018 and the parties subsequently had a hearing on the matter on June 27, 2018. The tenant was still late in paying June 2018 rent, July 2018 rent, August 2018 rent and has not paid September 2018 rent as of the date of this hearing. Even after receiving the second One Month Notice, the tenant continues to pay rent late or not at all.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 60 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00. Should the tenant 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 10, 2018

Residential Tenancy Branch