



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JAC HOLDING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR, MNDCT, OLC, PSF, LRE, RR

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Manufactured Home Park Tenancy Act* ("Act"). The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 26, 2018 ("10 Day Notice"), for a monetary claim for \$1,426.00 for the cost of repairs to the site or property, 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, for an order directing the landlord to provide services or facilities agreed upon but not provided, for an order to suspend or set conditions on the landlord's right to enter the rental site or property, and for a rent reduction.

The tenant, the landlord and an agent for the landlord JSB ("agent") attended the teleconference 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.

No evidence issues were raised by the parties.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on their application, the most urgent of which is the application to cancel the 10 Day Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 10 Day Notice at this proceeding. I will determine later in this decision what portions of the tenant's application will be dismissed with leave to reapply.

The parties confirmed their email addresses at the outset of the hearing. The parties were advised that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issue to be Decided

- Should the 10 Day Notice for Unpaid Rent or Utilities be cancelled?

Background and Evidence

The parties agreed that the tenancy began in April of 2015. The parties agreed that monthly site rent between June 2018 and August 2018 was \$423.00 per month and that in September 2018 there was a rent increase. The parties dispute the amount of the site rent increase effective September 2018.

The tenant testified that she received the 10 Day Notice dated September 26, 2018 on September 27, 2018. The tenant disputed the 10 Day Notice on October 3, 2018. The parties agreed that the 10 Day Notice indicated that \$1,709.00 in unpaid site rent was due as of June 1, 2018. The effective vacancy date listed on the 10 Day Notice was November 8, 2018, in error.

The tenant testified that she has not paid site rent for September or October of 2018 due to the landlord losing her post-dated cheques and that the cheques remain in an envelope.

The tenant continues to occupy the rental site.

Analysis

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

The tenant testified under oath that she received the 10 Day Notice on September 27, 2018. The effective vacancy date on the 10 Day Notice is listed as November 8, 2018 which is an error and provides the tenant an extra month in the rental site. The tenant continues to occupy the rental site. The tenant filed their application on October 3, 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 either pay rent in full or dispute the 10 Day Notice was on October 2, 2018. The tenant did not apply for dispute resolution until October 3, 2018 which is a Wednesday. I also find there to be insufficient evidence before me that site rent was not owed by the tenant which is supported by the tenant admitting that rent for September and October 2018 had not been paid and that the rent cheques remain in an envelope. It is not the responsibility of the landlord to try to locate the tenant for rent cheques or to search for rent cheques. It is the responsibility of the tenant to ensure the monthly site rent is paid to the landlord on or before the date that it is due.

Therefore, I find the tenant is conclusively presumed under section 39(5) of the *Act* to have accepted that the tenancy ends on the effective vacancy date of the 10 Day Notice which is listed as November 8, 2018. Therefore, I **dismiss** the tenant's application as the tenants are conclusively presumed to have accepted that the tenancy ends on November 8, 2018.

As the tenants continue to occupy the rental site section 48 of the *Act* applies and states:

Order of possession for the landlord

48 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if

(a) the landlord's notice to end tenancy complies with section 45 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[My emphasis added]

Based on the parties description of the 10 Day Notice and agreement during the hearing on the form and content of the 10 Day Notice, I find that the 10 Day Notice complies with section 45 of the *Act* and as a result, I must grant the landlord an order of possession. There is no evidence before me that the tenant has paid for use and occupancy since being served with the 10 Day Notice. Pursuant to section 48 of the *Act* I grant the landlord an order of possession effective **November 8, 2018 at 1:00 p.m. as that is the date listed by the landlord on the 10 Day Notice.**

Given the above, I find the tenancy ends November 8, 2018 at 1:00 p.m. I therefore, dismiss without leave to reapply the remainder of the tenant's application other than the monetary claim for \$1,426.00. The monetary claim of \$1,426.00 I dismiss with leave to reapply.

Conclusion

The tenant's application to cancel the 10 Day Notice and for all but the monetary claim is dismissed without leave to reapply.

The tenant is granted leave to reapply for the monetary claim that was severed under Rule 2.3 as indicated above.

The landlord is granted an order of possession effective November 8, 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.

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: October 29, 2018

Residential Tenancy Branch