



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, MNRT, MNDCT, OLC, RP, PSF, FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") 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 August 16, 2018 ("10 Day Notice"), for a monetary claim for \$4,260.00 for the cost of emergency repairs to the unit, 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 for regular repairs to the unit, site or property, for an order directing the landlord to provide services or facilities agreed upon but not provided and to recover the cost of the filing fee.

Tenant JD ("tenant") and the landlord 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 tenants 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 tenants' request to cancel the 10 Day Notice and the tenants' application to recover the cost of the filing fee at this proceeding. I will determine later in this decision what portions of the tenants' application will be dismissed with leave to reapply.

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Should the 10 Day Notice for Unpaid Rent or Utilities be cancelled?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a fixed term tenancy began on February 10, 2018. The fixed term tenancy is for a period of 10 years. Monthly rent is \$450.00 plus \$100.00 in utilities for a total of rent plus utilities of \$550.00 per month.

The tenant testified that he received the 10 Day Notice dated August 16, 2018 on August 16, 2018. The tenants disputed the 10 Day Notice on August 22, 2018. The 10 Day Notice indicates that \$275.00 in unpaid site rent was due as of August 15, 2018. The effective vacancy date listed on the 10 Day Notice was August 25, 2018.

The parties agreed that monthly rent was paid by the tenants up until August 15, 2018. This is reflected in a document submitted in evidence which was reviewed during the hearing.

The tenants continue to occupy the rental site.

The parties agreed during the hearing that there is no signed work for rent agreement in which a specific amount per hour is agreed to in writing between the parties.

Analysis

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

The tenant testified under oath that he received the 10 Day Notice on August 16, 2018. The effective vacancy date on the 10 Day Notice is listed as August 25, 2018. The tenants continue to occupy the rental site. The tenants filed their application on August 22, 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 tenants could either pay rent in full or dispute the 10 Day Notice was on August 21, 2018. The tenants did not apply for dispute resolution until August 22, 2018 which is a Wednesday. There is also no evidence before me to support that the \$275.00 in rent owing was paid by the tenants or that the tenants had a signed work for rent agreement in which a specific amount was agreed upon in writing between the parties in which work would be used towards the payment of rent. Therefore, I find the tenants are conclusively presumed under section 39(5) of the *Act* to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice which automatically corrects under section 46 of the *Act* to August 26, 2018. Therefore, **I dismiss** the tenants' application as the tenants are conclusively presumed to have accepted that the tenancy ended on August 26, 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]

I have reviewed the 10 Day Notice and find that it 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 tenants have 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 **two (2) days after service on the tenants.**

As the tenants were not successful with this application, I do not grant the tenants the recovery of their filing fee.

I find the tenancy ended on the August 26, 2018. Therefore, I only grant the tenants leave to reapply for their monetary claim which was severed as indicated above. The

remainder of the tenants' application is dismissed without leave to reapply as the tenancy ended August 26, 2018.

Conclusion

The tenants' application to cancel the 10 Day Notice and for the filing fee is dismissed due to insufficient evidence, without leave to reapply.

The tenants are 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 two (2) days after service on the tenants. This order must be served on the tenants 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 11, 2018

Residential Tenancy Branch