



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

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

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to sections 40 and 48; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 65.

The landlord, landlord's legal counsel, the tenant and her son attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged receipt of the Application for Dispute Resolution (the Application) and evidentiary package while the landlord acknowledged receipt of the tenant's evidence. In accordance with sections 81, 82 and 83 of the *Act*, I find that the tenant was duly served with the landlord's Application and evidentiary package and the landlord was duly served with the tenant's evidence.

Counsel submitted that the One Month Notice was personally served to the tenant on August 27, 2018. The tenant confirmed that they received the One Month Notice. In accordance with section 81 of the *Act*, I find that the tenant was duly served with the One Month Notice.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave written evidence that this tenancy began on December 01, 2010. The tenant testified that their current monthly rent is \$669.09, due on the first day of each month.

A copy of the signed One Month Notice, dated August 24, 2018, with an effective date of September 31, 2018, was included in the landlord's evidence. The landlord cited the following reasons for the issuance of the One Month Notice:

Tenant has allowed an unreasonable number of occupants in the unit/site

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant has not done required repairs to the unit/site

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In addition to the above, the landlord also submitted:

- A copy of the application form for the tenancy showing the listed occupants of the site which only indicates the tenant and her deceased partner;
- A copy of the park rules for the manufactured home park signed by the tenant and which indicates that no one may live in or occupy any space in the park without the prior consent of an agent of the park based on a reference check. The park rules state that they form a part of the tenancy agreement; and

- A copy of a letter from the landlord to the tenant dated June 23, 2018, which advises the tenant that they have people living with them who have not been approved by an agent of the park which is required for all occupants of the park. The letter indicates that the tenant has until June 30, 2018, to correct the issue or the tenant will be faced with Arbitration.

The landlord testified that the tenant has her two sons living with her and that the park has not approved them as occupants to reside in the park. The landlord stated that they provided the tenant with a letter requiring them to correct the issues but that the sons continue to live with the tenant and still have not been approved by the park.

The tenant confirmed that she did not dispute the One Month Notice. The tenant confirmed that her two sons live with her and questioned why they should not be permitted to.

Analysis

Section 40 of the *Act* establishes that a landlord may issue a One Month Notice to end a tenancy when the landlord has cause to do so.

Sections 40(4) and (5) of the *Act* stipulate that a tenant who has received a notice under this section, who does not make an application for dispute resolution within 10 Days after the date the tenant receives the notice, is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Based on the landlord's evidence and sworn testimony of the tenant, I find that the tenant did not make an application within 10 days of receiving the One Month Notice pursuant to section 40(4) of the *Act*. In accordance with section 40(5) of the *Act*, due to the failure of the tenant to take this action within 10 days, I find the tenant is conclusively presumed to have accepted that the tenancy ended on September 30, 2018, the corrected effective date on the One Month Notice.

In this case, the tenant and anyone on the premises were required to vacate the premises by September 30, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Even if the tenant had disputed the One Month Notice, I find that the tenant has not indicated that they have made any efforts to either have her sons approved by the park or to have her sons vacate the park. I further find that the tenant did not make any indication that she intended or was willing to have her sons vacate her manufactured home site. I find that the tenant was given a letter notifying her of a breach in her tenancy agreement, that she was given reasonable time to correct the situation and that the tenant made no efforts to do so.

Therefore, as the landlord has been successful in this application, I allow them to recover the filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) or anyone on the premises 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 a monetary Order in the landlord's favour in the amount of \$100.00, which allows the landlords to recover the filing fee from the tenant.

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: November 27, 2018

Residential Tenancy Branch