



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPC

Introduction

This hearing was convened by way of conference call. The Landlord had filed an Application for Dispute Resolution on October 23, 2018 (the “Application”). The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated August 20, 2018 (the “Notice”). The Landlord sought reimbursement for the filing fee.

The Landlord appeared at the hearing with the Witness who was outside of the room until required. The Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties and Witness provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord’s evidence. The Tenant confirmed he received the hearing package and evidence. The Tenant did not raise any issues in this regard at the outset of the hearing. Later in the hearing, the Tenant testified that he did not receive a copy of the Notice. I will address this issue later in this decision.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all relevant documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord and Tenant in relation to the site. The tenancy started May 1, 2016 and is a month-to-month tenancy. Rent is \$400.00 per month due on the last business day of each month.

The Notice is addressed to the Tenant and relates to the site. It is signed and dated by the Landlord. It has an effective date of September 20, 2018. The grounds for the Notice are that:

1. Tenant or a person permitted on the property by the tenant has:
 - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - c. Put the landlord's property at significant risk.
2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - a. Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
 - b. Jeopardize a lawful right or interest of another occupant or the landlord.

The Witness testified in relation to service. During her testimony, I could hear the Landlord correcting the Witness in relation to an issue. Further, the Witness gave conflicting evidence about what it is she served on the Tenant. I did not find the Witness reliable or credible and give her testimony no weight. Therefore, I have not outlined her testimony here.

The Landlord testified that he observed the Witness tape the Notice to the door of the home on the site on August 20, 2018. The Landlord had submitted a Proof of Service supporting this.

The Tenant acknowledged receiving the Notice although he gave conflicting evidence on this point.

The Tenant confirmed he did not dispute the Notice when he received it.

The Tenant submitted that the parties were in a prior arbitration where the Arbitrator ordered that the Landlord could not file a cross Application for Dispute Resolution. The parties provided the File Number for this prior arbitration and it is noted on the front page of this decision. The Tenant took the position that the Notice was a cross Application for Dispute Resolution and therefore the Landlord was not permitted to serve the Notice on him while the parties were waiting for the adjourned hearing date. He said the Notice relates to the same issues raised in the prior arbitration.

The Tenant submitted that the Landlord is seeking to end the tenancy because he does not want to follow through with the order of the prior Arbitrator in relation to the sewer issue. The Tenant made submissions about why he could not attend the adjourned hearing for the prior arbitration.

The Tenant submitted that a copy of the Notice was not served on him as part of the evidence for this hearing and therefore it was unfair for me to decide the matter when he did not have a copy of the Notice and could not speak to the contents of the Notice. The Landlord testified that a copy of the Notice was included in the evidence package. The Tenant did not have a copy of the evidence package with him during the hearing.

The Tenant further submitted that he did not dispute the Notice because there was no file number on the Notice. He also said he did not know he needed to dispute the Notice.

I have read all three decisions issued in relation to the prior arbitration. The prior arbitration dealt with the Tenant's application for the following:

- Seeking an order for the Landlord to comply with the Act, regulation, or tenancy agreement;
- Seeking an order for the Landlord to make repairs;

- Seeking an order for the Landlord to provide services or facilities required by the tenancy agreement or law; and
- Seeking a Monetary Order for loss or other money owed.

The decisions relate to a sewer hook-up at the site. In the first decision, the Arbitrator ordered that neither party “file an application to be crossed with this application”. This decision was issued June 20, 2018. On August 22, 2018, a second decision was issued dismissing the Tenant’s Application as he did not appear at the adjourned hearing. The Tenant sought a review of the August 22, 2018 decision but the application for review consideration was denied.

Analysis

The Landlord was permitted to serve a notice to end tenancy on the Tenant pursuant to section 40 of the *Manufactured Home Park Tenancy Act* (the “*Act*”) based on the grounds listed in the Notice.

I accept the testimony of the Landlord in relation to service of the Notice. The Tenant acknowledged receiving the Notice. I find the Tenant was served with the Notice in accordance with section 81(g) of the *Act*. I do not have evidence from the Tenant about when he received the Notice. Pursuant to section 83(c) of the *Act*, the Tenant is deemed to have received the Notice on August 23, 2018.

Upon a review of the Notice, I find it complies with section 45 of the *Act* in form and content as required by section 40(3) of the *Act*.

The Tenant had 10 days from receiving the Notice on August 23, 2018 to dispute it under section 40(4) of the *Act*.

I find the Tenant did not dispute the Notice in accordance with section 40(4) of the *Act* as he acknowledged that he did not dispute the Notice.

The Tenant gave numerous reasons for not disputing the Notice including the following:

- The Landlord was not permitted to file a cross Application for Dispute Resolution given the prior arbitration
- The Notice relates to the same issues raised in the prior arbitration
- There was no file number on the Notice
- He did not know he needed to dispute the Notice

None of these are sufficient reasons for not disputing the Notice. I agree that the Landlord was not permitted to file a cross Application for Dispute Resolution to be heard at the adjourned hearing pursuant to the first decision of June 20, 2018 in relation to the prior arbitration. The Landlord did not do so. A notice to end tenancy is not an Application for Dispute Resolution. There was nothing in the prior Arbitrator's decision of June 20, 2018 prohibiting the Landlord from serving the Notice on the Tenant. The order in relation to a cross Application for Dispute Resolution is unrelated to the Notice and does not provide the Tenant with a valid basis for failing to dispute the Notice.

I disagree that the Notice relates to the same issues raised in the prior arbitration. The prior arbitration dealt with the Tenant's application in relation to a sewer issue. The Notice was issued due to an unsightly mess, denial of access, injury due to the state of the site, rats, safety concerns due to mess and failure of the Tenant to comply with the order of the prior Arbitrator. The Notice was not issued until two days prior to the adjourned hearing date. The Notice was not an issue before the prior Arbitrator. Nor was the end of the tenancy an issue. A connection between the prior arbitration and the Notice is not a valid basis for failing to dispute the Notice in the circumstances.

There would be no reason for the Notice to have a file number on it, nor is this required by the *Act*. The lack of a file number is not a valid basis for failing to dispute the Notice.

The Tenant submitted that he did not know he needed to dispute the Notice. The need to dispute the Notice is stated on page two of the Notice under "INFORMATION FOR TENANTS" which is bolded. Parties are expected to read the documents they receive in relation to their tenancy. Further, parties are expected to know their rights and obligations under the *Act*. I do not find the Tenant's submission in this regard to be a valid basis for failing to dispute the Notice.

I find the Tenant failed to dispute the Notice and that he has provided no valid basis for failing to dispute the Notice. Therefore, pursuant to section 40(5) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended September 27, 2018, the corrected effective date of the Notice. The Tenant was required to vacate the site by September 27, 2018.

I note the remaining arguments made by the Tenant during the hearing and will address these. The Tenant submitted that the Landlord is seeking to end the tenancy because he does not want to follow through with the order of the prior Arbitrator in relation to the sewer issue. If the Tenant believed the Landlord issued the Notice for ulterior reasons

and that the Landlord did not have grounds to issue the Notice, the Tenant should have disputed the Notice in accordance with section 40(4) of the *Act*. The Tenant did not do so. The Tenant is therefore conclusively presumed to have accepted the Notice and any possible ulterior motive of the Landlord is not an issue before me.

The Tenant made submissions about why he could not attend the adjourned hearing for the prior arbitration. This has already been addressed in the application for review consideration which was denied. Further, this is irrelevant to the Notice which is the issue before me at this hearing.

The Tenant submitted that a copy of the Notice was not served on him as part of the evidence for this hearing and therefore it was unfair for me to decide the matter when he did not have a copy of the Notice and could not speak to the contents of the Notice. I note that the Landlord testified that a copy of the Notice was served on the Tenant with the evidence package which the Tenant acknowledged receiving. The Tenant did not have the evidence package with him during the hearing. I do not find the Tenant's testimony that he did not receive a copy of the Notice as evidence reliable given he was not able to double-check the evidence package during the hearing.

In any event, I am satisfied the Tenant received the Notice previously and therefore do not find it prejudicial to the Tenant to admit the Notice as evidence and consider it. If the Tenant took issue with the contents of the Notice, he should have disputed it when he received it. He did not do so. I have reviewed the contents of the Notice and am satisfied it complies with the *Act* in form and content. The grounds for the Notice, or basis for the Notice, are not an issue before me as the Tenant is conclusively presumed to have accepted the Notice. In all of these circumstances, I find it appropriate to consider the Notice and do not accept that it is unfair to the Tenant to do so.

Given the above, I find the Landlord is entitled to an Order of Possession. The Landlord sought an Order of Possession effective December 5, 2018. Given the corrected effective date of the Notice has passed, and the request of the Landlord, I grant the Landlord an Order of Possession effective two days after service on the Tenant pursuant to section 55 of the *Act*.

As the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 65 of the *Act*. The Landlord is granted a Monetary Order in this amount.

Conclusion

The Landlord is granted an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is entitled to a Monetary Order in the amount of \$100.00 for the filing fee. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: December 03, 2018

Residential Tenancy Branch