



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the *Manufactured Home Park Tenancy Act* (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on November 3, 2018, to have the landlord comply with the Act and recover the filing fee.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began approximately 15 years earlier. Site rent in the amount of \$251.00 was payable on the first of each month.

The Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on December 9, 2018.

The reason stated in the Notice was that the tenant is:

- Repeatedly late paying rent.

The landlord testified that the tenant has been late paying rent on the following dates:

- February 2018, rent was paid on February 6, 2018, by etransfer;
- June 2018, rent was paid on June 2, 2018, by etransfer;
- July 2018, rent was paid on July 3, 2018, by etransfer; and
- October 2018, rent was paid on October 3, 2018, by etransfer; and
- November 2018, rent was paid on November 3, 2018, by etransfer.

The tenant acknowledged that they were late paying rent on the stated dates. The tenant stated that they were residing elsewhere during this time and they simply forget to send the etransfer. The tenant stated they have always been a good tenant and they had no bad intentions.

The tenant testified that they sent the landlord postdated checks in October 2018, to resolve this issue; however, they were unaware of the postal strike.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 40(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant is:

- Repeatedly late paying rent.

In this case, the tenant has acknowledged that they were late paying rent on the above dates. While I accept the tenant did not do this with any bad intentions; however, it was their responsibility to ensure rent was received on time.

I find the Notice issued on November 3, 2018 has been proven by the landlord and is valid and enforceable.

Therefore, I dismiss the tenant's application to the Notice.

In this case, the effective date in the Notice is earlier than the Act allows. Therefore, that date automatically corrects pursuant to section 46 of the Act. The tenancy will end on December 31, 2018, in accordance with the Act.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **December 31, 2018, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlord.

At the conclusion of the hearing the landlord and tenant agreed that the tenant is allowed to sell the manufactured home subject to site rent being paid and the manufactured home can remain on the site with a new purchaser.

Conclusion

The tenant's application to cancel the Notice is dismissed.

The landlord is granted an order of possession.

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: December 13, 2018

Residential Tenancy Branch