



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 2 BAKER DEVELOPMENTS LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: CNR, MT
Landlord: OPR

Introduction

On December 14, 2018 the Tenant submitted an Application for Dispute Resolution (the "Tenant's Application"), seeking relief pursuant to the *Mobile Home Park Tenancy Act* (the "Act") for the following:

- a request for more time to cancel a notice; and
- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; dated December 7, 2018 (the "10 Day Notice").

On December 28, 2018 the Landlord submitted an Application for Dispute Resolution (the "Landlord's Application"), seeking relief pursuant to the *Residential Tenancy Act* (the "Act") for the following:

- an order of possession for unpaid rent.

The Landlord, T.S., as well as the Landlord's agent, J.S., attended the hearing at the appointed date and time, and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 20 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord, T.S and I were the only persons who had called into this teleconference.

At the beginning of the hearing, J.S. acknowledged receipt of the Tenant's Application package and documentary evidence. In response, the Landlord filled a cross Application and served the Tenant the Landlord's Application package and documentary evidence in person on December 31, 2018. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

All in attendance were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral

and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to End Tenancy that is compliant with section 52 of the *Act*.

Preliminary Matters

The Tenant's Application was made under the *Mobile Home Park Tenancy Act*. The Landlord applied under the *Residential Tenancy Act*. J.S confirmed that the dispute address is in fact a residential apartment rental which would not qualify as a Mobile Home Park Tenancy. In light of this information, I find that it is suitable to apply the *Residential Tenancy Act* in my decision.

As the Tenant did not appear at the hearing of their Application to cancel the 10 Day Notice dated December 7, 2018, I dismiss the Tenant's Application in its entirety without leave to reapply.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

In relation to the 10 Day Notice dated December 7, 2018, J.S. testified that she posted the 10 Day Notice on the Tenant's door on December 7, 2018. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenant is deemed to have received the 10 Day Notice on December 10, 2018.

Accordingly, pursuant to section 46(4) of the *Act*, the Tenant had until December 15, 2018, to either pay the rent noted on the 10 Day Notice in full or dispute the 10 Day Notice by filing an application for dispute resolution.

The Tenant made an Application on December 14, 2018, to cancel the 10 Day Notice, however, no one appeared for the Tenant at the time of the hearing, resulting in the dismissal of the Tenant's Application.

Under section 55 of the Act, when a Tenants Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants Application is dismissed without leave to reapply. The Landlord is granted an order of possession effective 2 days after service on the Tenants. The order should be served as soon as possible and may be filed in the Supreme Court 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 *Residential Tenancy Act*.

Dated: January 29, 2019

Residential Tenancy Branch