Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPLC, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Manufactured Home Park Tenancy Act* (the "*Act*") for an Order of Possession based on a 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park (the "12 Month Notice"), and for the recovery of the filing fee paid for this application.

Two legal counsel for the Landlord ("legal counsel") were present at the teleconference hearing. The Tenant and a legal advocate (the "Tenant") were also present.

The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord's evidence. Legal counsel for the Landlord stated that there were no issues with service. However, legal counsel did not have the Tenant's evidence package in front of them. The advocate for the Tenant confirmed that a copy of the Tenant's evidence was sent to both the Landlord and the office of the legal counsel by registered mail and that both packages were claimed. The Tenant's advocate provided the registered mail tracking numbers for both packages which are included on the front page of this decision.

The Tenant's advocate submitted that as they were unsure whether to send the package to the Landlord or his legal counsel, they sent an evidence package to each address. The advocate further stated that as the Notice of Dispute Resolution Proceeding package contained both addresses, they felt it was best to serve two evidence packages.

I find that both parties were served in accordance with Sections 88 and 89 of the *Act* and in accordance with the *Residential Tenancy Branch Rules of Procedure.*

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

During the hearing, the parties disputed whether both pages of the 12 Month Notice were served to the Tenant. Legal counsel for the Landlord requested that this matter be adjourned. They stated that as the Landlord was out of the country they were unable to confirm whether both pages of the 12 Month Notice were served to the Tenant. Both parties submitted the first page of the 12 Month Notice into evidence. The legal advocate for the Tenant stated their disagreement to an adjournment.

Legal counsel for the Landlord requested the adjournment, while the Tenant and the Tenant's legal advocate were not in agreement with this request. The hearing proceeded, and evidence and testimony were accepted on the claim. However, the parties were informed that the request for an adjournment would be considered and a decision would be made following the conclusion of the hearing.

Legal counsel stated that not granting an adjournment would be a breach of natural justice and stated their intent to file for a judicial review should an adjournment not be granted. They submitted that having the opportunity to confirm with the Landlord as to whether both pages of the 12 Month Notice were served would allow a final decision to be made. They submitted that they were not aware of the issue with the notice brought forth by the Tenant's legal advocate as they did not have the Tenant's evidence. They also stated that the Landlord would not have received the Tenant's evidence package due to being away at the time it was sent.

The registered mail tracking information provided by the Tenant shows that the package to the office of legal counsel was sent on December 21, 2018 and was delivered and signed for on December 27, 2018, within the 7-day timeframe provided for by the *Rules of Procedure.* The registered mail tracking information for the package sent to the Landlord shows that the package was sent on December 21, 2018 and although a notice to claim the package was delivered on December 24, 2018, the package was claimed and signed for on January 2, 2019.

The advocate for the Tenant stated that he was unsure of whether to send the Tenant's evidence package to the Landlord or his legal counsel, which is why he opted to send a package to each address.

While legal counsel for the Landlord submitted that adjourning the hearing would allow for clarification on the issue of the 12 Month Notice and that denying the request for an adjournment would be a breach of natural justice, I decline to grant an adjournment on this matter.

Rule 7.9 of the *Rules of Procedure* outlines the following criteria for consideration in granting an adjournment:

> *Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*
>
> - *the oral or written submissions of the parties;*
> - *the likelihood of the adjournment resulting in a resolution;*
> - *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
> - *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
> - *the possible prejudice to each party.*

Each of the above criteria was carefully considered and will be addressed below:

The oral and written submissions of the parties: The Landlord applied for Dispute Resolution on November 22, 2018 and the hearing was scheduled for January 8, 2019. The Landlord was found to have served the Tenant with the Notice of Dispute Resolution Proceeding package as required and submitted evidence that the package was delivered on November 27, 2018.

Therefore, I find that both parties had sufficient time to prepare for the hearing. As the applicant in this matter, the Landlord was responsible for providing the required information to support his claim. When requesting an Order of Possession on a notice to end tenancy, a landlord is required to submit the notice on which they intend to rely and provide sufficient evidence on the notice and service of the notice.

Rule 2.5 of the *Rules of Procedure* states that the applicant should submit relevant documentary evidence at the same time as the application, including a copy of the notice to end tenancy if seeking an Order of Possession. The Landlord submitted the first page of the 12 Month Notice twice and no copy of the second page was submitted.

I find that as the applicant, it is the Landlord's responsibility to ensure that the proper notice is served to the tenant and that they have proof of this ready at the time of the hearing. The Tenant also submitted only the first page and provided in their evidence a declaration that this is the only page they received. The Tenant's evidence package was found to be served as required and within the timeframe provided under the *Rules of Procedure.*

The likelihood of the adjournment resulting in a resolution: I find that this matter is able to be resolved at the time of the initial hearing based on the written and verbal submissions of both parties. I understand the stress involved for both parties and find that resolution to this matter should proceed based on the scheduled hearing.

The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: As stated above, I find the Landlord and legal counsel for the Landlord had time to prepare for the hearing and submit the appropriate documents to support their claim. I find it to be the responsibility of the Landlord to ensure that the notice was served and to have proof of this at the hearing.

Legal counsel submitted that the Landlord was out of town and therefore unable to respond to the Tenant's evidence package. However, the Landlord was aware of the hearing date when scheduled in November 2018 and therefore had time to ensure his legal counsel had the required information should he not be able to attend. As stated, the Tenant's evidence package was found to be served in accordance with the *Rules of Procedure.*

Whether the adjournment is required to provide a fair opportunity for a party to be heard: Both parties submitted evidence prior to the hearing, served their evidence to the other party in time for it to be reviewed, were represented at the hearing, ready to present their testimony and evidence and provided ample time at the hearing to do so. As such, I find that both parties were provided with a fair opportunity to be heard at the scheduled teleconference hearing.

The possible prejudice to each party: As mentioned, I find that immediate resolution to this matter is sought by both parties. Delaying resolution to provide more time for the Landlord to gather information, when they have already had the time and opportunity to do so, may prejudice the Tenant who attended the hearing ready to participate and gain resolution to this matter. Should the Landlord not be successful in obtaining an Order of Possession, they are at liberty to serve a new notice, thus limiting potential prejudice to the applicant.

As above, the criteria for granting an adjournment was carefully considered following the hearing and I do not find reason to grant an adjournment. This matter will be resolved through the decision outlined below.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a 12 Month Notice?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

Legal counsel for the Landlord was unsure of when the tenancy started but stated that it was a longstanding tenancy of at least 10 years. They stated that monthly rent throughout the tenancy has been set at $250.00.

The Tenant stated that the tenancy began in 1997 under an agreement with a previous property owner. She stated that rent has been raised a few times and is currently $257.50.

A sworn affidavit dated November 21, 2018 was submitted as evidence for the Landlord. This affidavit outlines the events that led to service of the 12 Month Notice,

Legal counsel submitted that the property where the Tenant's manufactured home is located is zoned for general industrial use. They stated that the Landlord uses the property for business purposes, such as storage and equipment maintenance and that it is unsafe for residential use. The Landlord submitted into evidence a city report to council dated October 27/18 regarding zoning of the property as well as a letter from the city dated July 12/18 confirming that the zoning of the property does not allow for manufactured home tenants.

Legal counsel further stated that the Landlord has been working since 2008 to have the property used only for the designated purpose. At the time there were 19 tenants and legal counsel stated that the Landlord has been successful in having 17 of those tenants move off the property. They stated that the arrangement with the Tenant was not meant to be an ongoing tenancy.

Legal counsel submitted that on July 2, 2017, the Tenant was served with a 12 Month Notice. The first page of the 12 Month Notice was submitted into evidence by both parties and states the effective end of tenancy date as June 30, 2018.

As the Tenant did not move on the date of the 12 Month Notice, legal counsel submitted that the Landlord sent the Tenant a final notification letter on August 1, 2018. The letter was submitted into evidence and stated that the Tenant must be moved out by August 1, 2018.

Legal counsel referenced an agreement signed between the parties in November 2008. The agreement, titled 'Letter of Understanding' was submitted into evidence by both parties. The letter states that the manufactured home may remain on the property indefinitely and also provides an outline of what will occur should the Tenant move or sell the manufactured home. Legal counsel stated that this was not meant for the

tenancy to continue forever and the Landlord was able to end the tenancy in accordance with the *Act.* They submitted that proper notice was given to end the tenancy along with a reasonable timeframe for the Tenant to move.

The Tenant referenced Section 45 of the *Act* which states that a notice to end tenancy given by a landlord must state the reasons for ending the tenancy. They also noted that a landlord must give the approved form when ending a tenancy.

The Tenant stated that she only received the first page of the 12 Month Notice and therefore was not aware of her right to dispute the notice and was not aware of the reason why the tenancy was ending. The Tenant referenced a sworn declaration submitted in their evidence package dated December 19/18 in which the Tenant states that she received the first page of the 12 Month Notice and states her understanding that the tenancy would continue indefinitely as long as rent was paid.

The Tenant confirmed receipt of the first page of the 12 Month Notice in person on July 2, 2017. She stated she was not aware that the notice was two pages long until discussing the matter with her legal advocate. She confirmed that she did not dispute the notice as she was unaware she was able to.

The Tenant stated that she has attempted to pay rent each month but that it has not been accepted by the Landlord since August 2018.

Analysis

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

Section 42(4) of the *Act* states that a tenant has 15 days in which to dispute a 12 Month Notice. If they do not dispute the notice, then Section 42(5) applies, and the tenant is conclusively presumed to have accepted that the tenancy ends.

The Tenant did not dispute the 12 Month Notice, which would lead to the conclusive presumption under Section 42(5) of the *Act* that the tenancy has ended. However, I find Section 45 of the *Act* to be relevant in this matter:

> In order to be effective, a notice to end a tenancy must be in writing and must
>
> (a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the manufactured home site,
(c) state the effective date of the notice,
(d) except for a notice under section 38 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
(e) when given by a landlord, be in the approved form.

As both parties submitted the first page of the 12 Month Notice only, and there was no evidence showing that both pages were served, I do not find sufficient evidence to establish that the approved form was used in accordance with Section 45(e) of the *Act.*

I also note that as stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure,* the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Although the Landlord submitted evidence to establish the reason for the notice, I do not find sufficient evidence for me to be satisfied that the approved form was served to the Tenant.

At the time the notice was served, the 12 Month Notice form was 2 pages long. The first page of the notice submitted into evidence states the following:

> *This is page 1 of a 2-page Notice. The landlord must sign page 1 of this Notice and must give the tenant pages 1 & 2.*
>
> (Reproduced as written)

While the first page contains information such as the date the tenancy is ending, the second page contains information for the tenant on how to dispute the notice. As such, if only one page was served to the Tenant I find it reasonable that she was not aware of her rights under the *Act* to dispute the notice.

Consideration was given as to whether the conclusive presumption applies in this matter, however I find that it does not. Although the Tenant did not dispute the notice, I am not satisfied that she was served with the 12 Month Notice in the approved form.

The Landlord has applied for an Order of Possession under Section 48 of the *Act* given that the time in which the Tenant may dispute the notice has since passed. However, to issue an Order of Possession, the Landlord must establish that a notice to end tenancy was served in accordance with the *Act.*

I find that the 12 Month Notice does not comply with Section 45 of the *Act* as I am not satisfied that the approved form was served to the Tenant. Therefore, I find the 12

Month Notice to be ineffective and decline to issue an Order of Possession. This tenancy continues until ended in accordance with the *Act.*

As the Landlord was not successful in their application for an Order of Possession, I decline to award the recovery of the filing fee. The Landlord's Application for Dispute Resolution is dismissed, without leave to reapply.

Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

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: January 09, 2019

Residential Tenancy Branch