



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OLC, MT, OPC, FFL

Introduction

This hearing was convened in response to cross applications.

On January 22, 2019 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause, for an Order requirement the Landlord to comply with the Manufactured Home Park Tenancy Act (Act) or the tenancy agreement; and for more time to apply to cancel this Notice to End Tenancy for Cause.

The Tenant stated that sometime in February of 2019 the Tenant's Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord. The Landlord acknowledged receipt of these documents.

On February 10, 2019 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on February 14, 2019 the Landlord's Application for Dispute Resolution and the Notice of Hearing were personally served to the Tenant. The Tenant acknowledged receipt of these documents.

On January 22, 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord with the Application for Dispute Resolution. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On February 06, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant on February 06, 2019. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On February 14, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant on February 14, 2019. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Should the Tenant be granted more time to cancel the One Month Notice to End Tenancy for Cause, served pursuant to section 40 of the *Manufactured Home Park Tenancy Act (Act)* and, if, so, should that Notice be set aside?

Should the Landlord be granted an Order of Possession on the basis of the One Month Notice to End Tenancy for Cause?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on October 01, 2013;
- rent is due by the first day of each month;
- a One Month Notice to End Tenancy for Cause was personally served to the Tenant on January 08, 2019;
- the Notice to End Tenancy declared that the Tenant must vacate the rental unit by February 08, 2019; and
- the Notice to End Tenancy was submitted in evidence.

In support of his application for more time to set aside the One Month Notice to End Tenancy for Cause the Tenant stated that:

- when he received the One Month Notice to End Tenancy he read the document but did not initially understand he was required to file an Application for Dispute Resolution;
- on the last day he was entitled to dispute the One Month Notice to End Tenancy (which was Friday, January 18, 2019) he went to the Residential Tenancy Branch and was advised that the Notice could be disputed on line;
- when he first attended the Residential Tenancy Branch he was advised that he

- had to file an Application for Dispute Resolution prior to the end of that day;
- he is not computer literate but he asked a friend to help him dispute the Notice to End Tenancy on line;
- he was unable to dispute the Notice to End Tenancy on line;
- he went back to the Residential Tenancy Branch on a Monday or Tuesday to dispute the Notice to End Tenancy.

Residential Tenancy Branch Records show that the Tenant filed an Application for Dispute Resolution to dispute the Notice to End Tenancy on January 22, 2019. In his Application for Dispute Resolution the Tenant does not explain why he did not file his Application for Dispute Resolution on time.

The Agent for the Landlord stated that she does not believe the time limit should be extended, as the Landlord thinks the Tenant was required to comply with the time limits established by the legislation.

Analysis

Section 40 of the *Manufactured Home Park Tenancy Act (Act)* authorizes a landlord to end a tenancy for a variety of reasons. Section 40(4) of the *Act* stipulates that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

On the basis of the undisputed evidence I find that on January 08, 2019 the Tenant received a One Month Notice to End Tenancy for Cause, dated January 08, 2019, which outlines reasons for ending the tenancy that are consistent that comply with section 40 of the *Act*. The Notice to End Tenancy that the Tenant received clearly indicates that the Tenant has “the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution with the Residential Tenancy Branch or at a Service BC Office”.

On the basis of Residential Tenancy Branch records I find that the Tenant did not file an Application for Dispute Resolution to dispute the Notice to End Tenancy until Tuesday, January 22, 2019, which is 14 days after he received the Notice to End Tenancy.

Section 59(1) of the *Act (Act)* authorizes me to extend the time limit for setting aside a Notice to End Tenancy only in exceptional circumstances. The word “exceptional” means that I am unable to extend this time limit for ordinary reasons. The word “exceptional” implies that the reason for failing to meet the legislated time lines is very strong and compelling. A typical example of an exceptional reason for not complying with the timelines established by legislation would be that the Tenant was hospitalized

for an extended period after receiving the Notice.

In the circumstances before me I find that the reasons provided by the Tenant for failing to dispute the Notice to End Tenancy within ten days are not strong and compelling. I find that failing to understand the clear instructions that were provided is simply not a compelling reason.

If I accepted the Tenant's testimony that on January 18, 2019 he was told he had to dispute the Notice to End Tenancy by the end of that business day and that he was unable to do so because of computer illiteracy, I would expect the Tenant to ensure the Application for Dispute Resolution was filed by the next business day, which was Monday January 21, 2018. In such circumstances I may have concluded that his computer illiteracy constituted exceptional circumstances and I may have extended the filing deadline. I do not, however, find that his computer illiteracy justified delay of two days.

As the Tenant has failed to establish strong and compelling reasons for being unable to dispute the Notice to End Tenancy within 10 days of receiving the Notice, I dismiss the Tenant's application for more time to apply to set aside the Notice to End Tenancy.

Section 40(5) of the *Act* stipulates that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with section 40(4) of the *Act*, the tenant 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.

As the Tenant did not dispute the Notice to End Tenancy within ten days of receiving it, I find that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and that he was obligated to vacate the rental unit by that date, pursuant to section 40(5) of the *Act*.

As the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the One Month Notice to End Tenancy, I dismiss the Tenant's application to cancel the Notice and I grant the Landlord's application for an Order of Possession.

I find that the Landlord's Application for Dispute Resolution has merit and I therefore grant the Landlord's application to recover the fee for filing an Application.

Conclusion

I grant the Landlord an Order of Possession that is effective on March 31, 2019. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$100, in compensation for the filing fee paid by the Landlord for filing an Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$100.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: March 07, 2019

Residential Tenancy Branch