



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOMBARDY MANAGEMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC
 OPR, MNRL-S, FFL

Introduction

This teleconference hearing was scheduled in response to applications by both parties. The parties applied under both the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. However, I find that this matter falls under the *Residential Tenancy Act* (the “Act”), which will be addressed in more detail below.

The Tenants applied to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”). The Landlord applied for an Order of Possession on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for monetary compensation for unpaid rent, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenants. The Landlord was affirmed to be truthful in her testimony and stated that the Tenants were served with the Notice of Dispute Resolution Proceeding package and a copy of their evidence by registered mail.

The Landlord submitted copies of the registered mail information and the tracking numbers are included on the front page of this decision. The Landlord testified that one package was delivered on September 15, 2019 while the package to the second Tenant was unclaimed and returned to sender. I find that the Tenants were both served in accordance with Section 89 of the *Act*, despite both Tenants not claiming the mail. I also note that the Tenants were aware of the hearing date and time due to their own application which was scheduled to be heard at the same time.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the Tenants' application.

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

Preliminary Matters

The Tenants filed their application under the *Manufactured Home Park Tenancy Act* while the Landlord filed the application under the *Residential Tenancy Act*. The agent in attendance at the hearing confirmed that this matter falls under the jurisdiction of the *Residential Tenancy Act* as the Tenants rent a mobile home that is owned by the Landlord. The Landlord also referenced the tenancy agreement submitted into evidence which was signed under the *Residential Tenancy Act*. I also note that a security deposit was paid by the Tenants at the start of the tenancy which is prohibited in an agreement under the *Manufactured Home Park Tenancy Act*.

I accept the testimony and evidence before me and find that this tenancy falls under the jurisdiction of the *Residential Tenancy Act* (the "Act").

During the hearing the Landlord stated that the outstanding rent amount was paid on September 25, 2019 and therefore they are no longer seeking monetary compensation for unpaid rent. The Landlord also noted that October 2019 rent was accepted for use and occupancy only. I accept that the Landlord is withdrawing their monetary claim for unpaid rent and therefore amend the application to remove this claim. Amendments to the applications were made pursuant to Section 64(3)(c) of the *Act*.

This decision will address the two notices to end tenancy in dispute as well as the Landlord's claim for the recovery of the filing fee.

Issues to be Decided

Should the One Month Notice be cancelled?

If the One Month Notice is upheld, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to an Order of Possession on the 10 Day Notice?

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

Background and Evidence

The Landlord provided undisputed testimony on the tenancy which was confirmed by the tenancy agreement submitted into evidence. The tenancy started on January 14, 2019. Rent in the amount of \$850.00 is due on the first day of each month. A security deposit of \$425.00 was paid at the start of the tenancy.

The Landlord testified that the Tenants were served in person with the One Month Notice on August 1, 2019. A copy of the One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the landlord's property at significant risk

The Landlord submitted evidence regarding the reasons for the One Month Notice including photos of the rental unit and property and a written timeline of events dated September 12, 2019 which outlines the Landlord's concerns.

The Landlord stated that the Tenants were served with a 10 Day Notice in person on September 2, 2019. A copy of the 10 Day Notice was included in evidence and states that \$850.00 was unpaid as due on September 1, 2019. The Landlord testified that they received a payment of \$450.00 on September 11, 2019 and then a payment of \$1,250.00 on September 25, 2019 which was the remainder of rent for September 2019 and full rent for October 2019 which was accepted for use and occupancy only.

The Landlord stated that she was aware that the Tenants had applied to dispute the One Month Notice but did not receive any notification that they had applied to dispute the 10 Day Notice. She also noted that the Tenants did not pay the outstanding rent within five days as required.

Analysis

I accept the undisputed testimony of the Landlord and find that the Tenants were served with a 10 Day Notice on September 2, 2019 pursuant to Section 46 of the *Act*. As stated in Section 46(4) of the *Act*, a tenant has 5 days to dispute the 10 Day Notice or pay the outstanding rent. I have no evidence before me that the Tenants applied to dispute the 10 Day Notice and I accept the testimony of the Landlord that the Tenants did not pay the \$850.00 owing within 5 days.

Although the Landlord stated that a payment of \$450.00 was paid on September 11, 2019 and the remaining \$400.00 owing for September rent was paid on September 25, 2019, a full payment of any outstanding rent must be made within 5 days for the 10 Day Notice to be cancelled. Therefore, I find that Section 46(5) of the *Act* applies as follows:

- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

Upon review of the 10 Day Notice, I find that the form and content comply with Section 52 of the *Act*. Therefore, as the Tenants are conclusively presumed to have accepted that the tenancy ends based on the 10 Day Notice, pursuant to Section 55 of the *Act* I find that the Landlord is entitled to an Order of Possession. As the Landlord has accepted October 2019 rent for use and occupancy only, I issue an Order of Possession effective October 31, 2019 at 1:00 pm.

Regarding the dispute over the One Month Notice, as the Tenants did not attend the hearing regarding their application to dispute the One Month Notice, their application is dismissed, without leave to reapply. However, as I have found that the tenancy ends on the 10 Day Notice, I do not find it necessary to determine the validity of the One Month Notice and whether the Landlord is entitled to an Order of Possession on the One Month Notice.

As the Landlord was successful with their application, pursuant to Section 72 of the *Act* I award the recovery of the filing fee in the amount of \$100.00. The Landlord may retain this amount from the security deposit.

Conclusion

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

I grant an Order of Possession to the Landlord effective **October 31, 2019 at 1:00 pm**. This Order must be served on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to Section 72 of the *Act*, I grant the Landlord the recovery of the filing fee in the amount of \$100.00. This amount may be retained from the security deposit which means that the security deposit held by the Landlord is now \$325.00.

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: October 11, 2019

Residential Tenancy Branch