



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SWIFTSURE DEVELOPMENTS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 40;

Both parties attended the hearing via conference call and provided affirmed testimony.

At the outset, the tenant stated that she was in hospital being treated for pneumonia since November 5, 2019 and did not submit any documentary evidence and did not have access to any of her own documentation. The applicant was asked if she could proceed with the hearing in the circumstances and she stated that she was able to go ahead. The hearing resumed with the tenant's consent.

Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail.

The landlord's counsel argued that the tenant had failed to file the application for dispute within the allowed 10 day timeframe. The tenant confirmed that she filed the application for dispute on September 19, 2019. A review of the Residential Tenancy Branch File shows that the application was submitted and filed on September 19, 2019. Section 40 (4) of the *Manufactured Home Park Tenancy Act* states in part that a tenant may dispute the notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

In this case, the tenant confirmed that she filed the application for dispute on September 19, 2019 after receiving the 1 month notice on August 28, 2019 posted to her door. A review of the calendar shows that 22 days passed before the tenant filed the application for dispute. The Act allows for 10 Days to file the application for dispute and as such, the tenant filed 12 days past the allowed timeframe. The tenant further argued that she

was told by an information officer in Victoria that she had applied within the allowed timeframe as the 10 days does not include weekends. The tenant was informed that this was not the case and had I allowed the exclusion of the weekends the tenant was still late by 6 days.

In this application the tenant did not apply for more time nor did the tenant provide any details of why she waited to file the application for dispute beyond the allowed 10 day timeframe. On this basis, I find that the landlord has established that the tenant applied late beyond the allowed 10 day timeframe and is subject to section 40 (5) which states in part that a tenant who has received a notice under this section does not make an application for dispute resolution is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the manufactured home site by that date.

At the conclusion of the hearing the tenant argued that she was not prepared and could not proceed with the hearing as she was in the hospital. The tenant was informed that at the outset, the tenant provided her consent to proceed with the hearing after giving notice of her circumstances and that she was able to go ahead despite being in the hospital.

The tenant's application is dismissed. The landlord's 1 month notice dated August 28, 2019 is upheld. The merits of the notice were not addressed. As the effective end of tenancy date has now passed, the landlord is granted an order of possession to be effective 2 days after it is served upon the tenant.

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: November 25, 2019

Residential Tenancy Branch