



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, MNDCT, FFT

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 39;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 60;
- disputation of a rent increase from the landlord, pursuant to section 34; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 65.

The landlord, the landlord's support person, the tenant and the park manager for the manufactured home park (the "park") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord was personally served with the tenant's application for dispute resolution on October 25, 2019. I find that the landlord was served in accordance with section 82 of the *Act*.

I note that section 48 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 the *Act*.

Preliminary Issue

The tenant's application for dispute resolution was made under the *Residential Tenancy Act*. As the subject rental property is a manufactured home site and not a manufactured home, I find that the tenant's application should have been made under the *Manufactured Home Park Tenancy Act*. Pursuant to section 57 of the *Manufactured Home Park Tenancy Act* and section 64 of the *Residential Tenancy Act*, I amend the tenant's application to be made under the *Manufactured Home Park Tenancy Act*.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for unpaid rent and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy and recovery of the filing fee for this application.

Issues to be Decided

1. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 39 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 65 of the *Act*?
3. If the tenant's application is dismissed and the landlord's Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 48 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

The park manager and the landlord agreed that the landlord signed a tenancy agreement with the manufactured home park for the subject rental site effective July 1, 2009. This tenancy agreement was entered into evidence. A second tenancy agreement between the landlord and the park may have been signed in 2012. A 2012 tenancy agreement was not entered into evidence.

The landlord, the tenant and the park manager agreed that the landlord advertised her site for sublet in 2018. The tenant responded to the landlord's add and moved his fifth wheel onto the landlord's site on October 8, 2018 and paid the landlord a monthly rate of \$750.00 per month, due on or before the first day of each month.

The landlord entered into evidence a Request for Consent to Sublet a Manufactured Site, Residential Tenancy Branch form #25 (form #25). Form #25 seeks authorization on behalf of the landlord to sublet the manufactured home site to the tenant. Authorization was granted by M.C. The landlord testified that M.C. was, at the time of signing, an owner of the park. The park manager testified that at the time of signing, M.C. was a director of the park.

The park manager alleges that form #25 only allows the tenant to sublet a manufactured home that is on the site, not the bare site itself. The park manager testified that because the landlord subletted the site to the tenant when a dwelling was not on it, the sublet was fraudulent. Since the sublet was fraudulent, the park asked the tenant to sign a tenancy agreement directly with the park.

The tenant testified that he signed a tenancy agreement with the park for the subject manufactured home park site, effective October 1, 2019. This tenancy agreement was entered into evidence. The tenant testified that he has been paying his rent directly to the park since October 1, 2019, and not to the landlord.

The landlord testified that the park has not provided her with any notice to end tenancy and she has not consented to the end of the tenancy. The park manager did not dispute the landlord's testimony.

The landlord testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on the tenant's door on October 7, 2019. The tenant testified that he received the 10 Day Notice on October 7, 2019.

Analysis

Section 37 of the *Act* set out how a tenancy ends.

37 (1)A tenancy ends only if one or more of the following applies:

- (a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i)section 38 [*tenant's notice*];
 - (ii)section 39 [*landlord's notice: non-payment of rent*];
 - (iii)section 40 [*landlord's notice: cause*];
 - (iv)section 41 [*landlord's notice: end of employment*];
 - (v)section 42 [*landlord's notice: landlord's use of property*];
 - (vi)section 43 [*tenant may end tenancy early*];
 - (b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 89 (2) (a.1), requires the tenant to vacate the manufactured home site at the end of the term;
 - (c)the landlord and tenant agree in writing to end the tenancy;
 - (d)the tenant vacates the manufactured home site or abandons a manufactured home on the site;
 - (e)the tenancy agreement is frustrated;
 - (f)the director orders that the tenancy is ended;
 - (g)the tenancy agreement is a sublease agreement.
- (2)[Repealed 2003-81-7.]
- (3)If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the manufactured home site on that date, the landlord and tenant have not entered into a new tenancy agreement, the

landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Based on the testimony of the landlord and the park manager, I find that the park has not ended the tenancy with the landlord in accordance section 37 of the *Act* and was therefore not permitted to sign a new tenancy agreement with the tenant for the subject rental site.

I make no finding on whether or not the landlord's request for permission to sublease was fraudulent as no such application is before me.

I find that the tenant entered into a sub-lease tenancy agreement with the landlord who received authorization to sublease the subject rental site from the park. I find that the tenant did not end the tenancy in accordance with section 37 of the *Act* and continues to reside at the subject rental site. Therefore, the tenancy between the tenant and the landlord is ongoing, as is the tenant's obligation to pay rent under section 20(1) of the *Act*.

Section 20(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenant has not paid the landlord rent for October, November or December of 2019, contrary to section 20(1) of the *Act* and the tenancy agreement with the landlord.

Section 39(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 39(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

In this case the tenant did not pay the overdue rent within five days of receiving the 10 Day Notice, I therefore dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply.

Section 48 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 45[*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the 10 Day Notice, I find that it complies with the form and content requirements of section 45 of the *Act*.

I find that since the 10 Day Notice complies with section 45 of the *Act* and the tenant's application to cancel the 10 Day Notice was dismissed, the landlord is entitled to a two-day Order of Possession.

As the tenant was not successful in his application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 65 of the *Act*.

Conclusion

Pursuant to section 48 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: December 06, 2019

Residential Tenancy Branch