



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL, FF, CNC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Manufactured Home Park Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for cause pursuant to section 40;
- a monetary order for unpaid rent pursuant to section 60;
- authorization to recover her filing fee for this application from the tenant pursuant to section 65.

The tenant applied 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. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail on March 23, 2020. The tenant stated that the submitted documentary evidence was served upon the landlord via email on April 27, 2020. The landlord disputes this claim stating that at no time has any evidence been served by the tenant. The tenant was unable to provide any supporting evidence of service. On this basis, I find on a balance of probabilities that the tenant did not serve the landlord with the submitted documentary evidence. As such, the tenant's documentary evidence was excluded from consideration in this decision.

Preliminary Issue(s)

At the outset, the tenant's application for filing for dispute was discussed. The landlord argued that the tenant had failed to file an application for dispute of the notice within the allowed 10 day limitation period. Both parties confirmed the 1 month notice is dated February 12, 2020. The landlord stated that it was served to the tenant via Canada Post Registered Mail on February 12, 2020. The tenant confirmed receipt of the 1 month notice as claimed. The tenant's application was submitted and intake payment were made on March 11, 2020. The tenant confirmed that it was filed on March 11, 2020. I find that the application was filed 14 days after the tenant received it. The tenant provided written details and testimony stating that she has a brain injury and experience post traumatic stress disorder. The tenant stated in her written details that the tenant had filed her application to dispute the 1 month notice by serving the landlord by mail on February 28, 2020 instead of the Residential Tenancy Branch. The tenant stated that as soon as she was advised of this the application was filed with the Residential Tenancy Branch. A review of the file shows that the application was filed on March 11, 2020, but that no request for more time was made. The tenant stated that she did file an amendment to the application for more time through her Advocate, however, the Advocate present stated that her file shows no amendment was filed or received by the Advocates office. In the circumstances that there is no record of an amendment being filed and based upon the evidence of the tenant and her advocate that there is conflicting and contradictory evidence on whether an actual amendment for more time to file an application was made. I find on a balance of probabilities that the tenant did not file an application for an amendment for more time. As such, the tenant has failed to provide sufficient evidence of filing an application within the allowed 10 Day time period and failed to file an application for more time to make an application. The tenant's application is dismissed. The hearing proceeded on the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that on February 12, 2020, the landlord served the tenant with the 1 Month Notice dated February 12, 2020 via Canada Post Registered Mail. The 1

Month Notice sets out an effective end of tenancy date of April 1, 2020 and that it was being given as:

- the tenant is repeatedly late paying rent.

The details of cause states: *Attached*

The landlord submitted a copy of a two page "Rent Payment Schedule". It states in part that the tenants rent payments when they were due and when the tenant had paid for the period June 1, 2015 to February 1, 2020. The landlord stated a warning was given to the tenant in 2015. The landlord stated that only 3 late rent payments were sufficient to end a tenancy as per the Residential Tenancy Branch Policy Guidelines. The landlord was advised that this was correct, however, the landlord was also asked to provide evidence that a warning/caution was given by the landlord to the tenant as the landlord has requested an end of tenancy based upon late rent payments beginning in 2015 until the date of this hearing. The landlord was advised that "a landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision."

During the hearing the landlord stated that she was unable to provide any evidence of when a warning/caution was given to the tenant which would result in a notice of end tenancy as per the notice dated February 12, 2020. On this basis, both parties were advised that the landlord's notice set aside and the tenancy would continue.

The landlord claims that the tenant failed to pay rent of \$390.15 that was due for March 2020 pad rent. The landlord also claims that the tenant has failed to pay any rent for April and May as of the date of this hearing. The tenant confirmed that although she attempted to pay rent, the landlord had refused to accept rent for March 2020 of \$390.15. The tenant also confirmed that as of the date of this hearing no rent has been paid for April and May 2020.

Analysis

In this case, both the tenant and the landlord have applied for dispute. The tenant filed an application to cancel the 1 month notice dated February 12, 2020. The landlord has filed an application for an order of possession as a result of the 1 month notice; a monetary claim for unpaid rent and recovery of the filing fee for \$490.15.

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. The landlord's application was dismissed as the 1 month notice dated February 12, 2020 was set aside and cancelled. The landlord failed to provide sufficient evidence of the tenant repeatedly late paying rent. The tenancy shall continue.

On the landlord's monetary claim, I accept the undisputed affirmed testimony of both parties and find that rent of \$390.15 was not paid for March 2020. Both parties also confirmed in their direct testimony that the tenant has not paid any rent for April and May 2020 at \$390.15 for each month. On this basis, I find that the landlord is entitled to a monetary claim of \$1,170.45.

The landlord having been partially successful is entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord's 1 month notice is set aside and the tenancy shall continue.
The landlord is granted a monetary order of \$1,270.45.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial 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 *Manufactured Home Park Tenancy Act*.

Dated: May 11, 2020

Residential Tenancy Branch