



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

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

- an order of possession for cause pursuant to section 40;
- authorization to recover the filing fee for this application from the tenants pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenants with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on April 7, 2020. The tenants confirmed that no documentary evidence was submitted. I accept the undisputed affirmed testimony of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to 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 applicant's claim and my findings are set out below.

The landlord stated that the tenants were served with the 1 month notice dated March 11, 2020 via Canada Post Registered Mail on March 11, 2020. The tenant disputes that

no such notice was served until the tenants received the landlord's notice of hearing package for this application. The landlord stated that a copy of a completed proof of service document was provided which shows that the tenants were served via Canada Post Registered Mail on April 7, 2020. The landlord also referred to the submitted copies of the Canada Post Customer Receipt and tracking label. The landlord also submitted a copy of the Canada Post Tracking History which confirms the landlord's claim. The tenants argued that the signature provided was not that of the tenant's, E.W. The landlord stated that during the state of emergency, Canada Post Registered Mail packages were not being signed by the recipient, but instead the Canada Post personnel when the package is actually being delivered. In this circumstance, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant and find that the tenants were properly served with the 1 month notice dated March 11, 2020 via Canada Post Registered Mail. The tenant is deemed served as per section 90 of the Act.

The landlord stated that on March 11, 2020, the landlord served the tenant with the 1 Month Notice dated March 11, 2020 via Canada Post Registered Mail on March 11, 2020. The 1 Month Notice sets out an effective end of tenancy date of April 30, 2020 and that it was being given as:

- the tenant has not done required repairs of damage to the unit/site.
- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The details of cause state:

- Tenant has not complied with an order made by arbitration following Jan 24, 2020 hearing file # 31057437
- Inspection of the site on February 27, 2020 shows that scheduled work is incomplete and in non compliance with municipal building code.

Extensive discussions took place with both parties in which the landlord clarified that the two reasons selected for cause were as a result of one incident. Both parties confirmed that in a previous decision (neither party provided a copy of that decision) an Arbitrator made an order for the tenant to make repairs by February 24, 2020 to the satisfaction of the landlord. The tenant stated that the repairs were completed on February 17, 2020 for which the landlord was notified. The landlord stated that instead of inspecting the repair work, he called the local district building inspector who conducted an inspection on February 27, 2020. The inspector found that the unit was non-compliant on 7 points which were listed in a letter by the district dated March 5, 2020. The landlord stated that

the tenant was served with a copy of the district letter on April 7, 2020 when he served the tenant with the landlord's application for dispute. The tenant argued that he was not given any prior notice from the landlord regarding complying with the district letter dated March 5, 2020. The tenant stated that currently he is unable to work due to a medical disability and that he is currently self-isolating due to the state of emergency. The landlord argued that the tenant was seen recently at the dump moving freely without any apparent health issues. Both parties confirmed that as of the date of this hearing no work/repairs have been made to the rental unit to comply with the district regulations.

Analysis

Section 47(1)(g) of the Act sets out that a landlord may also terminate a tenancy where a tenant does not repair damage to the rental unit or other residential property, as required under section 32, within a reasonable time; and 47 (1) (l) the landlord may also terminate a tenancy where the tenant has not complied with an order of the director within 30 days of the later of the following dates the tenant receives the order or the date specified in the order for the tenant to comply with the order.

In this case, I find that the tenant was properly served with the 1 month notice dated March 11, 2020 via Canada Post Registered Mail. However, I find that the district letter dated March 5, 2020 for which the 1 month notice is based was not served to the tenant until the Application for dispute was served to the tenant on April 7, 2020. The landlord abdicated his responsibility to inspect the rental site relying on the District inspector as noted in the letter dated March 5, 2020 by the District. I find that the landlord failed to provide any direction to the tenant on the satisfactory nature of the repairs until the tenant was served on April 7, 2020 with the notice of hearing package for this application. The landlord provided undisputed testimony that he served the District letter which is the direction by which the landlord relies for a satisfactory inspection to the repairs on April 7, 2020 after the tenant was served with the 1 month notice dated March 11, 2020. On this basis, I find that the landlord was pre-mature in issuing the 1 month notice dated March 11, 2020 as the landlord failed to give the tenant direction on a deadline to comply with the District letter after he was served with it. The landlord's notice dated March 11, 2020 is set aside and cancelled. The tenancy shall continue.

Conclusion

The landlord's application is dismissed.

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 27, 2020

Residential Tenancy Branch