



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

In this dispute, the tenants sought an order under section 55 of the *Manufactured Home Park Tenancy Act* (the “Act”), and recovery of the filing fee under section 65 of the Act.

An application for dispute resolution was made on May 6, 2020 and a dispute resolution hearing was convened, by way of teleconference, on June 16, 2020. The tenants, the landlord, the tenants’ advocate, and the landlord’s legal counsel attended the hearing. It should be noted that tenants R.W. and M.S. provided written authorization (a copy of which was submitted) for the advocate to represent them and settle the matter in their absence. All parties were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service arose during the hearing.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, and to which I was referred, only evidence relevant to the issues of these applications are considered.

Settlement Agreement – For Tenants J.W., R.W. and M.S.

The hearing commenced at 9:30 AM and after the parties’ advocate and legal counsel made submissions, the prospect for settlement appeared to be an avenue for resolving the dispute. Thus, pursuant to section 56(1) of the Act I offered the parties an opportunity to settle. The hearing recessed at 10:00 AM until 10:30 AM, at which point we recessed for a further fifteen minutes until 10:45 AM, to allow the parties to discuss settlement outside the hearing.

Section 56(2) of the Act states that if the parties settle their dispute during dispute resolution proceedings that I may record the settlement in the form of a decision or an order.

The parties agreed to settle this matter as follows:

1. the landlord will pay tenant J.W. \$20,000.00 in two payments as follows: \$10,000.00 to be paid by July 31, 2020 and \$10,000.00 to be paid when the manufactured home is removed from the pad;
2. the landlord will permit tenant J.W. to stay until August 31, 2020;
3. the landlord will pay tenants R.W. and M.S. \$20,000.00 in two payments as follows: \$10,000.00 to be paid by July 31, 2020 and \$10,000.00 to be paid once tenants R.W. and M.S. have vacated the property or on August 31, 2020, whichever is earlier;
4. the landlord will permit tenants R.W. and M.S. to stay until August 31, 2020.

While the parties did not speak to this point, I order that the landlord not terminate hydro until all tenants have vacated, including tenants L.C. and J.I.L.

As the dispute was resolved by way of settlement, I decline to award recovery of the filing fees in respect of the above-noted tenants' applications.

Issue

Are the tenants L.C. and J.I.L. entitled to an order that the landlord comply with the Act, the regulations, or the tenancy agreement?

Background and Evidence

The tenants were given a notice to end their tenancy by the landlord on July 31, 2019. A copy of the notice was submitted into evidence, and in which the landlord stated, "It is with deep regret that we must inform you that, effective August 1st, 2020, the [name of manufactured home] Park will be permanently closed." The notice went on to say that the tenants would not have to pay rent for the remaining year, that the tenants would be expected to vacate the park by July 31, 2020, and that hydro would be discontinued as of July 31, 2020. Monthly pad rent was \$200.00.

The tenants' advocate argued that the notice was not a valid notice to end tenancy under the Act, and landlord's counsel conceded that it was not the proper form.

But, he did point out that the tenants were aware that the park was closing and why.

Analysis

The tenants' advocate argued and submitted that the notice given is ineffective because it does not comply with the Act. Landlord's counsel conceded on this point.

Section 45 of the Act states that

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the manufactured home site,
- (c) state the effective date of the notice,
- (d) except for a notice under section 38 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

If a notice does not contain all five of the above-noted criteria in subsections (a) through (e) then the order is not effective. If an order is not effective then it cannot be considered a notice to end a tenancy agreement under section 42 of the Act. Thus, it follows that a tenant is not obliged to dispute a non-effective notice under section 42(4) of the Act. There is, in other words, no legal notice to dispute.

Having found that the notice was not in the proper, or approved, form, then it follows that the notice is invalid and is of no force or effect.

Nearer to the end of the hearing, there was some brief discussion between the parties' advocate and counsel regarding the landlord's reissuing of a proper notice.

Taking into consideration all the oral testimony, submissions, and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that because the landlord issued a notice to end a tenancy that was not in compliance with the Act, I thus order the landlord, should they issue a further notice to end the tenancy agreement, to comply with the Act in so doing.

I grant the tenants L.C. and J.I.L. \$100.00 for recovery of the filing fee. The landlord must pay to the tenants L.C. and J.I.L. this amount within a reasonable period of time; a monetary order is issued in conjunction with this decision in respect of this award.

Conclusion

I order the parties to comply with the terms of the settlement agreement as set out above as it pertains to the relevant tenants.

I further order, pursuant to section 55 of the Act, that the landlord comply with the Act, the regulation, or the tenancy agreement.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: June 16, 2020

Residential Tenancy Branch