



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding W.V. INCOME PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, FFT

Introduction

On August 28, 2020, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 40 of the *Manufactured Home Park Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 65 of the *Act*.

Tenant T.B. attended the hearing. D.M. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

T.B. advised that she served the Notice of Hearing and evidence package to the Landlord by registered mail on August 31, 2020 and D.M. confirmed that the Landlord received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been sufficiently served the Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

D.M. advised that she served the Landlord’s evidence to the Tenants by registered mail on September 9, 2020 (the registered mail tracking number is noted on the first page of this Decision). T.B. advised that she never received this evidence; however, the registered mail tracking history indicated that this package was delivered on September 18, 2020. Based on this tracking history, I am satisfied that the Tenants have been sufficiently served with the Landlord’s evidence. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 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 complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 9, 2014. Rent was currently established at an amount of \$754.80 per month and was due on the first day of each month. A signed copy of the tenancy agreement was submitted as documentary evidence.

D.M. stated that the Notice was served to T.B. by email on July 31, 2020 and to an adult occupant by hand on July 31, 2020. T.B. took no issue with service of the Notice. The reasons the Landlord served the Notice are as follows.

- The Tenants have allowed an unreasonable number of occupants in the unit/sire/property/park.
- The Tenants or a person permitted on the property by the Tenants:
 - Have significantly interfered with or unreasonably disturbed another occupant or the Landlord;

- Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and/or
 - Put the Landlord's property at significant risk.
- The Tenants or a person permitted on the property by the Tenants have engaged in illegal activity that has, or is likely to:
 - Damage the Landlord's property;
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord; and/or
- The Tenants or a person permitted on the property by the Tenants have caused extraordinary damage to the unit/site or property/park.

The effective end date of the tenancy on the Notice was noted as August 31, 2020.

D.M. advised that T.B.'s daughter and boyfriend occupy the rental unit. She has received almost 40 complaints from other residents of the park and she also has 27 written complaints from residents about the actions and behaviours of the daughter and boyfriend. None of these complaint letters were submitted as documentary evidence, however. She stated that the daughter suffers from mental health issues and drug addiction. Amongst the many documented issues, there has been an ongoing history of the yard not being kept up, incidents of drug activity and use, unleashed pets, parties, and a general disregard for the park rules and other residents of the park.

She stated that there has been criminal activity around the rental unit and property has been stolen around the park by people known to T.B. Residents of the park are fearful of T.B.'s daughter. There have also been reports that T.B.'s daughter has gone to the park office and pretended to impersonate a realtor. She stated that multiple warning letters have been issued to the Tenants with the latest one regarding a burned-out RV that was parked in the driveway. All of the warning letters have been ignored.

T.B. advised that she did not dispute the Notice as it was her intention to sell the home. However, she then disputed the Notice almost a month after receiving it as she needs more time because her daughter is in the hospital and she requires more time to sell the home. She is not requesting that the Notice be overturned, and she is not making any attempts to argue or deny the Landlord's allegations. She mistakenly applied to cancel a One Month Notice to End Tenancy for End of Employment, but all parties agreed and understood that the Tenant was attempting to dispute a One Month Notice to End

Tenancy for Cause. She did not apply for more time to make this Application to dispute the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Notice served to the Tenants on July 31, 2020, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 45 of the *Act*. I find that this Notice meets all of the requirements of Section 45.

The undisputed evidence before me is that the Landlord served the Notice on July 31, 2020 by hand and email. According to Section 40(4) of the *Act*, the Tenants have 10 days from being deemed to have received this Notice to dispute it, and Section 40(5) of the *Act* states that *"If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date."* I find it important to note that this information is provided on the third page of the Notice as well.

As the Tenants were served the Notice on July 31, 2020, it was received that day. The tenth day to dispute the Notice then fell on Monday August 10, 2020. As such, the Tenants must have made this Application by this day at the latest. However, the undisputed evidence is that the Tenants did not make this Application until August 28, 2020. The Tenants were late in making this Application and they did not make a request for more time to do so.

As T.B. did not dispute the Notice pursuant to Section 40(4) of the *Act* and did not have a valid reason for not disputing the Notice in time, I find that the Tenants have been conclusively presumed to have accepted the Notice and must vacate the rental unit pursuant to Section 40(5) of the *Act*. However, as the Tenants have not vacated the site, I must still determine whether the reasons the Landlord served the Notice are valid.

Based on the consistent, undisputed testimony before me, I am satisfied that the reasons stipulated on the Notice have been justified. Ultimately, as the Tenants were conclusively presumed to have accepted the Notice, and as I am satisfied of the reasons the Notice was served, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 45 and 48 of the *Act*. I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants.

As the Tenants were not successful in this Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Tenants' Application for Dispute Resolution in its entirety.

I grant an Order of Possession to the Landlord effective **two days** after service of this Order on the Tenants. Should the Tenants 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: October 9, 2020

Residential Tenancy Branch