



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FFL

Introduction

On August 17, 2020, the Landlord submitted an Application for Dispute Resolution requesting an order of possession for the rental unit and a monetary order for unpaid rent. On September 8, 2020 the Landlord amended application to increase the amount being claimed for unpaid rent.

The matter was set for a conference call hearing at 9:30 am on this date. The Landlord attended the conference call hearing; however, the Tenant did not. The line remained open while the phone system was monitored for fifteen minutes and the Tenant did not call into the hearing during this time.

The Landlord testified that she served the Tenant with the Notice of Dispute Resolution Proceeding in person at the rental site on August 21, 2020 at 4:40 pm. She testified that her husband was present to witness service. The Landlord Mr. E.L. testified that he witnessed service of the Notice of Dispute Resolution Proceeding on August 21, 2020.

I find that the Tenant was served with the notice to attend the hearing in accordance with section 89 of the Act. I find that Tenant was served on August 21, 2020 and has failed to attend the hearing to respond to the Landlords claims.

The hearing proceeded and the Landlord was provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

Issues to be Decided

- Is the Landlord entitled to an order of possession for the rental unit based on an undisputed notice to end tenancy?

- Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The Landlord testified that the tenancy began in August 2016 and is on a month to month basis. Rent in the amount of \$375.00 is to be paid to the Landlord by the first day of each month.

The Landlord testified that the tenancy agreement provides the Tenant with exclusive use of the secondary driveway on her residential property. She testified that the Tenant parks his motorhome there and it is his primary residence. She testified that she believes this arrangement is a tenancy under the Act, and due to ongoing concerns, she issued a notice to end tenancy.

The Landlord testified that she issued the Tenant a One Month Notice to End Tenancy for Cause ("the One Month Notice") in person to the Tenant on July 27, 2020. The Landlord provided a proof of service document that indicates the One Month Notice was served to the Tenant on July 27, 2020

The reasons cited by the Landlord within the One Month Notice are as follows:

Tenant is repeatedly late paying rent

Tenant or a person permitted on the property by the Tenant has:

- *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*
- *Put the Landlord's property at significant risk*

Tenant has caused extraordinary damage to the unit/site property /park

Tenant has not done required repairs of damage to the unit/site

The One Month Notice provides that the Tenant must move out of the rental unit by August 31, 2020.

The One Month Notice provides information on the rights of a Tenant. At the top of the form the Notice provides: "*This is a legal notice that could lead to you being evicted from your home.*" The Notice also informs the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice informs the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the effective date set out on page one of the Notice.

There is no evidence before me that the Tenant disputed the One Month Notice.

The Landlord seeks an order of possession for the rental unit, based on an undisputed One Month Notice to End Tenancy for Cause dated July 27, 2020.

Unpaid Rent

The Landlord testified that the Tenant is still living on the site; however, he has not paid the rent owing under the tenancy agreement for April 2020 onwards. The Landlord has applied for a monetary order in the amount of \$2,250.00 for unpaid rent for the months of April 2020 up to and including September 2020.

The Landlord requested to include a claim for unpaid October 2020 rent. The Landlord testified that the Tenant knows that rent of \$375.00 is due under the agreement by the first day of each month and he has not paid October 2020 rent.

The Landlord is seeking a monetary order for unpaid rent in the amount of \$2,625.00.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

I find that the tenancy agreement for rental of a site falls under the *Manufactured Home Park Tenancy Act*.

I find that the Tenant received a One Month Notice to End Tenancy for Cause dated July 27, 2020.

The One Month Notice provided the Tenant with his rights of dispute. If the Tenant believed that the Landlord did not have sufficient cause to end the tenancy, the Tenant was required to dispute the Notice within 10 Days. The Tenant did not dispute the One Month Notice. The Tenant's opportunity to dispute the Notice has expired.

I find that the Tenant is conclusively presumed under section 40(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Section 48(2) of the Act provides that a Landlord may request an order of possession of a rental unit when a notice to end tenancy is given by a Landlord and the Tenant has not disputed the Notice and the time for making that application has expired.

I find that the Landlord is entitled to an order of possession, pursuant to section 48 of the Act, effective two (2) days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 65 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find it is reasonable to amend the claim to include unpaid October 2020 rent. I find that the Tenant owes the Landlord the amounts of \$2,625.00 for unpaid rent and \$100.00 for the cost of the filing fee. I grant the Landlord a monetary order in the amount of \$2,725.00.

Conclusion

The Tenant received a One Month Notice to End Tenancy for Cause and did not file to dispute the Notice. The Tenant is presumed under the legislation to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective two (2) days, after service on the Tenant.

The Tenant has failed to pay the rent owing under the tenancy agreement for the last seven months. I grant the Landlord a monetary order for unpaid rent in the amount of \$2,725.00.

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 02, 2020

Residential Tenancy Branch